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Nos. 90-1419, 90-1769

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

NATIONAL RAILROAD PASSENGER CORPORATION and CENTRAL VERMONT RAILWAY, INC.,
Petitioners,

v.

BOSTON and MAINE CORPORATION, *et al.*,
Respondents.

INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA,
Petitioners,

v.

BOSTON and MAINE CORPORATION, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT APPENDIX

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Verified Statement Of F. Colin Pease Submitted To The FCC, Dated June 29, 1988 (Including Exhibit A) JA-139

Verified Statement Of F. Colin Pease Submitted To The ICC, Dated July 19, 1988 ..... JA-145

NOTATION OF CROSS-REFERENCED RECORD MATERIALS

The following decisions and orders have been omitted in the printing of this Joint Appendix, pursuant to Supreme Court Rule 30.1, because they appear on the following pages in the Appendix to the printed Petition for *Certiorari* ("Pet. App.") filed in No. 90-1419:

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BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket Nos. 31250 and 31259

National Railroad Passenger Corporation—Conveyance Of Boston And Maine Corporation Interests In Connecticut River Line In Vermont And New Hampshire,

And

Central Vermont Railway, Inc.—Petition For Exemption—Acquisition And Operation Of Certain Interests In Rail Lines From The National Railroad Passenger Corporation

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CONSOLIDATED DOCKET ENTRIES

Document	**Date**
National Railroad Passenger Corp.'s Notice Of Intention To File Section 402(d) Application (F.D. No. 31250)	Filed March 22, 1988
Commonwealth Of Massachusetts' Petition To Intervene In F.D. No. 31250 And Comments	Filed April 1, 1988
Windsor Minerals, Inc.'s Comments	Filed April 1, 1988
National Railroad Passenger Corp.'s Section 402(d) Application And Memorandum Of Law	Filed April 4, 1988

Boston & Maine Corp.'s Statement In Opposition To National Railroad Passenger Corp.'s Section 402(d) Application	Filed April 6, 1988
Boston & Maine Corp.'s Letter Transmitting Exhibits A And B To Its Statement In Opposition	Filed April 6, 1988
Central Vermont Railway, Inc.'s Petition For Exemption Regarding Its Acquisition And Operation Of Certain Interests In Rail Lines From National Railroad Passenger Corp. (F.D. No. 31259)	Filed April 7, 1988
National Railroad Passenger Corp.'s Reply To Boston & Maine Corp.'s Statement In Opposition	Filed April 8, 1988
National Railroad Passenger Corp.'s Petition For An Order Requiring Production Of Documents	Filed April 11, 1988
State Of Vermont's Petition To Intervene In F.D. No. 31250 And Comments	Filed April 14, 1988
Boston & Maine Corp.'s Reply To State Of Vermont's Petition To Intervene	Filed April 14, 1988
Canadian Pacific, Ltd.'s Petition To Intervene In F.D. No. 31250 And Motion To Broaden The Scope Of The Proceedings	Filed April 20, 1988
National Railroad Passenger Corp.'s Reply To Canadian Pacific's Motion To Broaden The Scope Of The Proceedings	Filed April 22, 1988

Boston & Maine Corp.'s Verified Petition To Convert National Railroad Passenger Corp.'s Section 402(d) Application Into A Section 402(a) Application	Filed April 22, 1988
Commonwealth Of Massachusetts' Petition To Intervene In F.D. No. 31259	Filed April 25, 1988
Ascutney Travel, Inc.'s Comments	Filed April 27, 1988
Windsor Minerals, Inc.'s Petition To Intervene In F.D. No. 31259	Filed April 27, 1988
State Of Vermont's Petition To Intervene In F.D. No. 31259	Filed April 28, 1988
Decision: A Proceeding Is Instituted Under Section 402(d) Of RPSA And This Proceeding Will Be Handled Under Modified Procedure; Boston & Maine Corp.'s Request That The Application Be Rejected Is Denied; The Petitions To Intervene By Commonwealth Of Massachusetts, State Of Vermont, And Connecticut Department Of Transportation Are Granted; Central Vermont Railway, Inc.'s Petition Of Exemption In F.D. No. 31259 Is Consolidated For Handling With This Proceeding; National Railroad Passenger Corp.'s Petition For Document Discovery Is Granted; Canadian Pacific's Petition To Intervene In F.D. No. 31250 Is Granted. This Decision Is Effective Upon April 29, 1988.	Entered April 29, 1988

Comments Of Railway Labor Executives' Association	Filed April 29, 1988
Rail Travel Center's Support Letter	Filed May 2, 1988
National Railroad Passenger Corp.'s Supplemental Information In Support Of Application	Filed May 2, 1988
National Railroad Passenger Corp.'s Interrogatories And Document Requests To Boston & Maine Corp.	Filed May 2, 1988
Comments Of Robert A. Johnson	Filed May 3, 1988
Railway Labor Executives' Association's Petition To Intervene And Request For Clarification Of The Procedural Schedule	Filed May 3, 1988
Comments Of Scott Palmer	Filed May 4, 1988
Boston & Maine Corp.'s Objection To Procedural Schedule	Filed May 4, 1988
National Railroad Passenger Corp.'s Verified Opposition To Boston & Maine Corp.'s Verified Petition To Convert Section 402(d) Application Into Section 402(a) Application	Filed May 5, 1988
National Railroad Passenger Corp.'s And Central Vermont Railway, Inc.'s Reply To Boston & Maine Corp.'s Objection To Procedural Schedule	Filed May 5, 1988

Boston & Maine Corp.'s Interrogatories And Documents Requests To National Railroad Passenger Corp.	Filed May 7, 1988
Boston & Maine Corp.'s Interrogatories And Document Requests To Central Vermont Railway, Inc.	Filed May 7, 1988
Boston & Maine Corp.'s Interrogatories And Document Requests To State Of Vermont	Filed May 7, 1988
National Railroad Passenger Corp.'s And Central Vermont Railway, Inc.'s Letter To Counsel For Boston & Maine Corp. Clarifying The Scope Of One Of The Requests For Document Production	Filed May 9, 1988
Boston & Maine Corp.'s Supplemental Interrogatories And Document Requests To Central Vermont Railway, Inc.	Filed May 9, 1988
Railway Labor Executives' Association's First Set Of Discovery Requests To Boston & Maine Corp.	Filed May 9, 1988
Railway Labor Executives' Association's First Set Of Discovery Requests To Central Vermont Railway, Inc.	Filed May 9, 1988
Railway Labor Executives' Association's First Set Of Discovery Requests To National Railroad Passenger Corp.	Filed May 9, 1988
State Of New Hampshire's Petition To Intervene	Filed May 10, 1988

Decision: Boston & Maine Corp.'s Request To Amend The Procedural Schedule Set Forth In Decision Of April 29, 1988 Is Denied; Railroad Labor Executives' Association's Petition To Intervene Is Granted; Windsor Minerals, Inc.'s Petition To Intervene Is Granted	Entered May 11, 1988
State Of New Hampshire's Comments/Evidence	Filed May 14, 1988
State Of Vermont's Comments	Filed May 16, 1988
Central Vermont Railway, Inc.'s Verified Responses To Boston & Maine Corp.'s Interrogatories And Document Requests	Filed May 16, 1988
National Railroad Passenger Corp.'s Verified Responses To Boston & Maine Corp.'s Interrogatories And Document Requests	Filed May 16, 1988
Central Vermont Railway, Inc.'s Verified Responses To Boston & Maine Corp.'s Supplemental Interrogatories And Document Requests	Filed May 16, 1988
National Railroad Passenger Corp.'s Verified Supplemental Responses To Boston & Maine Corp.'s Interrogatories And Document Requests	Filed May 17, 1988
Boston & Maine Corp.'s Petition To Reopen ICC's Decision Of April 29, 1988	Filed May 19, 1988
Boston & Maine Corp.'s Motion To Compel Discovery From National Railroad Passenger Corp. And Central Vermont Railway, Inc.	Filed May 21, 1988

National Railroad Passenger Corp.'s Response To Boston & Maine Corp.'s Petition To Reopen ICC's Decision Of April 29, 1988	Filed May 24, 1988
Comments of Bruce MacPhail	Filed May 24, 1988
Decision: Boston & Maine Corp.'s Petition To Convert National Railroad Passenger Corp.'s Section 402(d) Application To A Section 402(a) Application Is Denied; The Petitions To Intervene In F.D. No. 31259 Filed By Commonwealth Of Massachusetts And State Of Vermont Are Dismissed; The Petition To Intervene By The State Of New Hampshire Is Granted. This Decision Is Effective May 25, 1988.	Entered May 25, 1988
Central Vermont Railway, Inc.'s Verified Responses To Boston & Maine Corp.'s Interrogatories And Document Requests	Filed May 25, 1988
National Railroad Passenger Corp.'s Verified Responses To Boston & Maine Corp.'s Interrogatories And Document Requests	Filed May 25, 1988
Central Vermont Railway, Inc.'s Verified Supplemental Response To Boston & Maine Corp.'s Interrogatories And Document Requests	Filed May 25, 1988
National Railroad Passenger Corp.'s Supplemental Responses To Boston & Maine Corp.'s Interrogatories And Document Requests	Filed May 25, 1988

Joint Response Of National Railroad Passenger Corp. And Central Vermont Railway, Inc. To Boston & Maine Corp.'s Motion To Compel Discovery	Filed May 25, 1988
Central Vermont Railway, Inc.'s Verified Response To Railway Labor Executives' Association's First Set Of Discovery Requests	Filed May 26, 1988
State Of Vermont's Responses To Boston & Maine Corp.'s Interrogatories And Document Requests	Filed May 27, 1988
Boston & Maine Corp.'s Argument And Evidence In Opposition To National Railroad Passenger Corp.'s Section 402(d) Application And Central Vermont Railway, Inc.'s Petition For Exemption	Filed May 31, 1988
Canadian Pacific Ltd.'s Comments And Argument In Opposition To Central Vermont Railway, Inc.'s Petition For Exemption	Filed May 31, 1988
National Railroad Passenger Corp.'s Verified Response To Railway Labor Executives' Association's First Set Of Discovery Requests	Filed May 31, 1988
Windsor Minerals, Inc.'s Reply Verified Statement In Opposition To Boston & Maine Corp.'s Argument And Evidence	Filed June 3, 1988

Decision: Boston & Maine Corp.'s Motion To Compel Discovery Is Denied. This Decision Is Effective June 3, 1988.	Entered June 3, 1988
Decision: Boston & Maine Corp.'s Petition To Reopen The ICC's Decision Of April 29, 1988 Is Denied. This Decision Is Effective June 3, 1988.	Entered June 3, 1988
Commonwealth Of Massachusetts' Reply Verified Statement Of Fredrick P. Salvucci	Filed June 3, 1988
Central Vermont Railway, Inc.'s Rebuttal Testimony	Filed June 3, 1988
National Railroad Passenger Corp.'s Rebuttal Testimony	Filed June 3, 1988
Commonwealth Of Massachusetts' Verification To Reply Verified Statement Of Frederick P. Salvucci	Filed June 6, 1988
Decision: National Railroad Passenger Corp.'s Motion To Compel Discovery Is Granted	Entered June 8, 1988
State Of Vermont's Brief In Support Of National Railroad Passenger Corp.'s Section 402(d) Application And Central Vermont Railway, Inc.'s Petition For Exemption	Filed June 8, 1988
Windsor Minerals, Inc.'s Brief	Filed June 8, 1988
Commonwealth Of Massachusetts' Final Brief On Need And Exemption Issues	Filed June 8, 1988

Reply Brief Of National Railroad Passenger Corp. And Central Vermont Railway, Inc. On Need Issues And Exemption Petition	Filed June 8, 1988
Boston & Maine Corp.'s Supplemental Argument	Filed June 8, 1988
Canadian Pacific, Ltd.'s Initial Brief	Filed June 8, 1988
Notice To The Parties Regarding Briefing On Proposed Terms And Conditions Of Conveyance Of Connecticut River Line (Jane F. Mackall, Director, Office Of Proceedings)	Entered June 8, 1988
Comments Of Tracy Didas	Filed June 10, 1988
Comments Of H.P. Harrison	Filed June 10, 1988
Comments Of Railway Labor Executives' Association Regarding National Railroad Passenger Corp.'s Section 402(d) Application	Filed June 10, 1988
Letter Of Counsel For National Railroad Passenger Corp. Regarding Status Of Boston & Maine Corp.'s Responses To Interrogatories And Document Requests	Filed June 13, 1988
Supplemental Verified Statement Of R.L. Banks And C.H. Banks	Filed June 13, 1988
Commonwealth Of Massachusetts' Opening Evidence And Argument Regarding "Just Compensation" Issue	Filed June 13, 1988

Boston & Maine Corp.'s Motion For Procedural Relief	Filed June 16, 1988
National Railway Passenger Corp.'s Motion To Compel Discovery And Reply To Boston & Maine Corp.'s Motion For Procedural Relief	Filed June 20, 1988
Canadian Pacific, Ltd.'s Petition To Recognize Substantially Changed Circumstances	Filed June 23, 1988
Boston & Maine Corp.'s Supplemental Statement Regarding National Railroad Passenger Corp.'s Section 402(d) Application And Central Vermont Railway, Inc.'s Petition For Exemption	Filed June 24, 1988
Decision: Boston & Maine Corp.'s Motion For Procedural Relief Is Premature And Will Not Be Acted Upon At This Time. This Decision Is Effective June 24, 1988.	Entered June 24, 1988
National Railroad Passenger Corp.'s Reply To Boston & Maine Corp.'s Motion For Procedural Relief	Filed June 27, 1988
Decision: National Railroad Passenger Corp.'s Motion To Compel Boston & Maine To Answer Interrogatory No. 26 Is Granted; Motion Is Otherwise Denied. This Decision Is Effective June 28, 1988.	Entered June 28, 1988
National Railroad Passenger Corp.'s Motion For Protective Order	Filed June 29, 1988

National Railroad Passenger Corp.'s Statement To Accompany Second Supplemental Verified Statement On Just Compensation And Second Supplemental Verified Statement Of R.L. Banks And C.H. Banks (CONFIDENTIAL)	Filed June 29, 1988
Decision: Parties Are To Submit Their Respective Positions And Arguments With Respect To Compensation In Accordance With The Set Procedural Schedule, In Anticipation Of ICC Decision On Or About August 8, 1988. This Decision Is Effective July 5, 1988.	Entered July 5, 1988
Decision: Boston & Maine Corp.'s Request For Additional Time To Submit Argument And Evidence On The Just Compensation Issue Is Denied; National Railroad Passenger Corp.'s Supplemental Evidence On The Issue Of Just Compensation Is Accepted; Boston & Maine Corp.'s Motion For Procedural Relief Is Denied. This Decision Is Effective July 5, 1988.	Entered July 5, 1988
Boston & Maine Corp.'s Argument And Evidence Regarding "Just Compensation" (Filed Under Seal, Not Available For Public Inspection)	Filed July 5, 1988

Decision: This Procedural Schedule Is Amended To Provide A Period Of 15 Days From July 5, 1988 For Parties To Supplement The Record On Competitive Concerns And An Additional 5 Days For Simultaneous Filing Of Replies. This Decision Is Effective On July 5, 1988.	Entered July 5, 1988
Railway Labor Executives' Association's Evidence And Brief On The Issue Of "Just Compensation"	Filed July 5, 1988
Railway Labor Executives' Association's Motion To File Late	Filed July 6, 1988
Boston & Maine Corp.'s Petition For Reconsideration With Regard To Certain Discovery Matters	Filed July 6, 1988
National Railroad Passenger Corp.'s Motion To Permit Boston & Maine Corp. To File Additional Evidence	Filed July 7, 1988
National Railroad Passenger Corp.'s Response To Boston & Maine's Corp.'s Petition For Reconsideration	Filed July 7, 1988
Decision: National Railroad Passenger Corp.'s Motion For Protective Order Is Granted; The Subject Material Filed Under Seal Will Not Be Made Available In The Public Docket In This Proceeding Or Otherwise Disclosed To The Public, Except As Specified. This Decision Is Effective July 11, 1988.	Entered July 12, 1988

Decision: National Railroad Passenger Corp.'s Motion To Permit Boston & Maine Corp. To File By July 13, 1988 Additional Evidence Limited To Issues Raised By The New Material In National Railroad Passenger Corp.'s June 28th Supplemental Evidence Is Granted. This Decision Is Effective On July 12, 1988.	Entered July 12, 1988
Commonwealth Of Massachusetts' Reply On "Just Compensation" Issue	Filed July 13, 1988
Supplemental Verified Statement Of Gordon H. Fay On Just Compensation	Filed July 13, 1988
State Of Vermont's Rebuttal Argument Regarding "Just Compensation"	Filed July 13, 1988
National Railroad Passenger Corp.'s Reply Brief And Rebuttal Testimony On Just Compensation Issues (Three Volumes)	Filed July 13, 1988
Decision: Boston & Maine Corp.'s Petition Requesting Reconsideration Of The Decision Served June 28, 1988 Compelling Boston & Maine To Answer Interrogatory No. 26 Is Denied. This Decision Is Effective July 19, 1988.	Entered July 19, 1988
State Of New Hampshire's Statement On Competitive Issues	Filed July 19, 1988
State Of Massachusetts' Statement	Filed July 20, 1988

Central Vermont Railway, Inc.'s Argument And Supplemental Evidence On Competitive Issues	Filed July 20, 1988
Canadian Pacific Ltd.'s Supplemental Statement And Evidence	Filed July 20, 1988
State Of Vermont's Statement Of Fact And Argument In Support Of Central Vermont Railway, Inc.'s Petition For Exemption	Filed July 20, 1988
Boston & Maine Corp.'s Supplemental Argument And Evidence	Filed July 20, 1988
Central Vermont Railway, Inc.'s Motion For Leave To File Verified Statement Of N.R. Cutler	Filed July 21, 1988
Boston & Maine Corp.'s Letter Addressed To Mr. Dicello Requesting That He Authorize Release Of Information	Filed July 21, 1988
Verified Statement Of N.R. Cutler	Filed July 22, 1988
Central Vermont Railway, Inc.'s Rebuttal Argument On Competitive Issues	Filed July 25, 1988
Windsor Minerals, Inc.'s Reply to Boston & Maine Corp.'s Supplemental Argument On Competitive Issues	Filed July 25, 1988
Canadian Pacific, Ltd.'s Reply To Supplemental Statements	Filed July 25, 1988
Boston & Maine Corp.'s Supplemental Reply Argument On Competitive Issues	Filed July 25, 1988

Boston & Maine Corp.'s Motion To File Additional Argument And Evidence	Filed August 3, 1988
Boston & Maine Corp.'s Supplemental Argument And Evidence Regarding "Just Compensation"	Filed August 3, 1988
ICC's Environmental Assessment Of Transactions Proposed In National Railroad Passenger Corp.'s Section 402(d) Application And Central Vermont Railway, Inc.'s Petition For Exemption	Entered August 5, 1988
Decision: Granting National Railroad Passenger Corp.'s Section 402(d) Application; Establishing Just Compensation; Imposing Terms And Conditions On The Transaction; Granting Central Vermont Railway, Inc.'s Petition For Exemption, Etc. This Decision Is Effective August 12, 1988.	Entered August 9, 1988
Boston & Maine Corp.'s Petition For Stay Pending Judicial Review	Filed August 12, 1988
Opposition Of National Railroad Passenger Corp. And Central Vermont Railway, Inc. To Boston & Maine Corp.'s Petition For Stay	Filed August 12, 1988
State Of Vermont's Opposition To Boston & Maine Corp.'s Petition For Stay	Filed August 15, 1988
Windsor Minerals, Inc.'s Response In Opposition To Boston & Maine Corp.'s Petition For Stay	Filed August 17, 1988

Decision: Boston & Maine Corp.'s Petition For Stay Is Denied. This Decision Is Effective August 23, 1988.	Entered August 23, 1988
Decision: This Proceeding Is Reopened; Boston & Maine Corp.'s Additional Argument And Evidence On Just Compensation Filed August 3, 1988 Is Accepted; The Prior Finding Of NLV Is Amended To Be $2,042,290. The Prior Finding Of Just Compensation In This Proceeding In The Amount Of $2,373,286 Is Affirmed; The Last Sentence Of The 5th Full Paragraph On Page 30 Of Our Decision Served August 9, 1988 Is Deleted. This Decision Is Effective August 24, 1988.	Entered August 24, 1988
National Railroad Passenger Corp.'s Notification Of Intent To Purchase Connecticut River Line	Filed August 26, 1988
Notice: A Court Action Was Instituted On Or About August 24, 1988 Involving This Proceeding Before The United States Court Of Appeals For The District Of Columbia Circuit	Entered September 1, 1988

IN THE
UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

No. 88-1631

Boston and Maine Corporation,
Petitioner,

v.

Interstate Commerce Commission, and
United States of America,
Respondents,

Windsor Minerals, Inc.,
State Of Vermont,
National Railroad Passenger Corporation,
Central Vermont Railway, Inc.,
Commonwealth Of Massachusetts,
Intervenors.

And Consolidated Cases Nos. 88-1728, 88-1731
And 38-1732

CONSOLIDATED DOCKET ENTRIES

Document	**Date**
Petitioner Boston & Maine Corp.'s Petition For Review Of An Order Of The ICC (No. 88-1631)	Filed August 24, 1988

Clerk's Order That Initial Submissions And Procedural Motions Due September 23, 1988; Dispositive Motions Due October 10, 1988	Entered August 24, 1988
Certified Copy Of Above Order And Petition For Review Was Mailed To Respondent(s)	Entered August 24, 1988
Emergency Motion Of Petitioner Boston & Maine Corp. For Temporary Stay	Filed August 24, 1988
Motion Of Petitioner Boston & Maine Corp. For Stay Pending Appeal	Filed August 24, 1988
Per Curiam Order That The Parties Comply With The Briefing Schedule Agreed To By The Parties And Set Forth In Petitioner's Stay Petition. Silberman, Williams and Sentelle, CJs.	Entered August 24, 1988
Motion Of Windsor Minerals, Inc. For Leave To Intervene In No. 88-1631	Filed August 26, 1988
Motion Of Central Vermont Railway, Inc. For Leave To Intervene In No. 88-1631	Filed August 26, 1988
Motion Of National Railroad Passenger Corp. For Leave To Intervene In No. 88-1631	Filed August 26, 1988
Respondent ICC's Response In Opposition To Petitioner's Emergency Motion For Stay Pending Appeal	Filed August 26, 1988
Motion Of The State Of Vermont For Leave To Intervene In No. 88-1631	Filed August 26, 1988

Motion Of Petitioner Boston & Maine Corp. For Leave To File Reply Brief After 4:00 p.m.	Filed August 30, 1988
Intervenor State Of Vermont's Opposition to Motions Of Petitioner For Stay Pending Appeal	Filed August 31, 1988
Intervenor Windsor Minerals, Inc.'s Response In Opposition to Emergency Motion For Temporary Stay And Motion For Stay Pending Appeal	Filed August 31, 1988
Joint Opposition Of Intervenors National Railroad Passenger Corp. And Central Vermont Railway, Inc. To Emergency Motion For Temporary Stay And Motion For Stay Pending Appeal	Filed August 31, 1988
Supplemental Record Excerpts From ICC Finance Dockets Nos. 31250 And 31259	Filed August 31, 1988
Correction To Joint Opposition Of National Railroad Passenger Corp. And Central Vermont Railway, Inc. To Motions For Stay	Filed August 31, 1988
Petitioner Boston & Maine Corp.'s Reply To Briefs In Opposition To Emergency Motion For Stay	Filed August 31, 1988

Per Curiam Order That All Motions To Intervene Are Granted. The Clerk Is Directed To File Intervenors' Lodged Documents; That Petitioner's Motion For Leave To File Reply Brief After 4:00 p.m. Be Granted. The Clerk Is Directed To File Petitioner's Reply Brief; That Petitioner's Emergency Motion For Temporary Stay And Stay Pending Appeal Be Denied. Silberman and Williams, JJ.	Entered August 31, 1988
Certified Index To Record	Entered September 23, 1988
Petitioner Boston & Maine Corp.'s Initial Submissions And Docketing Statement And Notification Regarding Deferred Appendix	Filed September 23, 1988
Petitioner Canadian Pacific, Ltd.'s Petition For Review Of An Order Of The ICC (No. 88-1728)	Filed October 6, 1988
Petitioners National Railroad Passenger Corp.'s And Central Vermont Railway, Inc.'s Petition For Review Of An Order Of The ICC (No. 88-1731)	Filed October 7, 1988
Petitioner Commonwealth Of Massachusetts' Petition For Review Of An Order Of The ICC (No. 88-1732)	Filed October 7, 1988
Motion Of Railway Labor Executives' Association For Leave To Intervene In No. 88-1731	Filed October 14, 1988
Certified Index To Record (No. 88-1728)	Entered November 15, 1988

Certified Index To Record (No. 88-1731)	Entered November 16, 1988
Petitioner Commonwealth Of Massachusetts' Motion For Determination That Two Issues Are Not Ripe For Judicial Review Or Are Moot (No. 88-1732)	Filed November 22, 1988
Petitioner Boston & Maine Corp.'s Motion For Consolidation Of Cases Nos. 88-1631, 88-1728, 88-1731 And 88-1732	Filed December 1, 1988
Certified Index To Record (No. 88-1732)	Entered December 7, 1988
Clerk's Order That (1) The Motion For Consolidation Is Granted. The Clerk Is Directed To Establish No. 88-1631, *Boston And Maine Corp. v. ICC*, As Lead Docket. All Pleadings Should Include This Number And Caption. (2) The Motions For Leave To Intervene Are Granted. (3) The Clerk Is Directed To File The Lodged Responses.	Entered December 12, 1988
Response Of National Railroad Passenger Corp. And Central Vermont Railway, Inc. To Commonwealth Of Massachusetts' Motion For Determination That Two Issues Are Not Ripe For Judicial Review Or Are Moot.	Filed December 12, 1988
Response Of Boston & Maine Corp. To Commonwealth Of Massachusetts' Motion For Determination Of Ripeness And Mootness.	Filed December 12, 1988

Reply Of Commonwealth Of Massachusetts To Responses To Commonwealth Of Massachusetts' Motion For Determination That Two Issues Are Not Ripe For Judicial Review Or Are Moot.	Filed December 12, 1988
Joint Letter To Court From Counsel Regarding Briefing	Filed December 22, 1988
Per Curiam Order That The Motion Of Commonwealth Of Massachusetts For Determination That Two Issues Are Not Ripe For Judicial Review Or Are Moot Be Denied. Mikva, Ruth B. Ginsburg And Silberman, CJs.	Entered March 7, 1989
Clerk's Order Regarding Scheduling Of Consolidated Cases For Oral Argument And Briefing Schedule	Entered April 12, 1989
Brief Of Petitioners National Railroad Passenger Corp., *et al.*	Filed August 9, 1989
Brief Of Petitioner Canadian Pacific, Ltd.	Filed August 9, 1989
Brief Of Petitioner Boston & Maine Corp.	Filed August 9, 1989
Brief Of Petitioner Commonwealth Of Massachusetts	Filed August 9, 1989
Corrected Brief Of Petitioner Commonwealth Of Massachusetts	Filed August 11, 1989
Supplemental Certified Index To The Record	Entered August 17, 1989
Letter Dated August 17, 1989, Informing The Court Of Designation Of Contents Of Deferred Appendix	Filed August 18, 1989

Motion Of National Railroad Passenger Corp. And Central Vermont Railway, Inc. To Exceed Page Limit For Brief Due October 27, 1989	Filed September 6, 1989
Per Curiam Order That Motion Of National Railroad Passenger Corp., *et al.*, To Exceed Page Limit For Brief Is Denied	Entered September 20, 1989
Motion Of Respondent ICC For Leave To File Motion Out Of Time-To Exceed Page Limit	Filed October 6, 1989
Per Curiam Order That The Motion Of Respondent ICC Leave To File Motion Out Of Time Be Granted; The Clerk Is Directed To File Respondent ICC's Lodged Motion To Exceed Page Limit; It Is Further Ordered That The Motion For Leave To Exceed Page Limit Be Denied; Respondent ICC Is Directed To Refile Its Brief In Compliance With This Court's Rule On Or Before October 19, 1989.	Entered October 12, 1989
Respondent's Motion For Leave To Exceed Page Limit. (Filed Per Above Order.)	Filed October 12, 1989
Brief Of Respondent ICC	Filed October 17, 1989
Joint Brief Of National Railroad Passenger Corp., Central Vermont Railway, Inc., State Of Vermont, And Windsor Minerals, Inc.	Filed October 27, 1989
Brief Of Intervenor Railway Labor Executives' Association	Filed October 27, 198?

Reply Brief Of Commonwealth Of Massachusetts	Filed November 13, 1989
Reply Brief Of Boston & Maine Corp.	Filed November 13, 1989
Reply Brief Of National Railroad Passenger Corp. And Central Vermont Railway, Inc.	Filed November 13, 1989
Deferred Appendix, Vol. I, II	Filed November 29, 1989
Joint Brief Of Respondents ICC And United States Of America	Filed December 7, 1989
Final Brief Of Boston & Maine Corp.	Filed December 15, 1989
Final Reply Brief Of Boston & Maine Corp.	Filed December 15, 1989
Final Brief Of Commonwealth Of Massachusetts	Filed December 15, 1989
Final Reply Brief Of Commonwealth Of Massachusetts	Filed December 15, 1989
Final Brief Of National Railroad Passenger Corp. And Central Vermont Railway, Inc.	Filed December 15, 1989
Final Reply Brief Of National Railroad Passenger Corp. And Central Vermont Railway, Inc.	Filed December 15, 1989
Final Joint Brief Of National Railroad Passenger Corp., Central Vermont Railway, Inc., State Of Vermont, and Windsor Minerals, Inc	Filed December 15, 1989
Clerk's Order, *Sua Sponte*, Setting The Time Allotments For Oral Argument	Entered December 22, 1989

Emergency Motion Of National Railroad Passenger Corp. And Central Vermont Railway, Inc. To Waive Rule 13(c) And Permit More Than Two Counsel Per Side To Argue	Filed January 17, 1990
Petitioners Commonwealth Of Massachusett's Response To National Railroad Passenger Corp./Central Vermont Railway, Inc.'s Emergency Motion To Waive Rule 13(c)	Filed January 17, 1990
Per Curiam Order: Petitioners National Railroad Passenger Corp.'s/ Central Vermont Railway, Inc.'s Emergency Motion Is Granted And Argument Shall Proceed As Follows: Petitioner Boston & Maine-15 Minutes; Petitioner Commonwealth Of Massachusetts-5 Minutes; Petitioners National Railroad Passenger Corp./Central Vermont Railway, Inc.-5 Minutes; Respondents-20 Minutes; Intervenor National Railroad Passenger Corp.-5 Minutes.	Entered January 17, 1990
Argued Before Ruth B. Ginsburg, Buckley And Sentelle, Circuit Judges (Consolidated Cases)	January 18, 1990
Letter From Counsel For Boston & Maine Corp. Advising Of Additional Authority Pursuant To FRAP 28(j)	Filed March 30, 1990
Opinion For The Court Filed By Circuit Judge Buckley	Entered August 10, 1990

Concurring Opinion Filed By Circuit Judge Ruth B. Ginsburg	Entered August 10, 1990
Judgment For The Court That The Petition For Review Is Granted In Part And Dismissed In Part, In Accordance With The Opinion For The Court Filed Herein This Date.	Entered August 10, 1990
Mandate Order	Entered August 10, 1990
Petitioner Boston & Maine Corp.'s Bill Of Costs	Filed August 24, 1990
Limited Opposition Of Commonwealth Of Massachusetts To Boston & Maine Corp.'s Bill Of Costs	Filed August 31, 1990
Transcript Of Oral Argument Proceedings	Entered September 4, 1990
Objections Of Respondents ICC And United States Of America To Bill Of Costs	Filed September 5, 1990
Petition Of Respondents ICC And United States Of America For Rehearing With Suggestion For Rehearing *En Banc*	Filed September 24, 1990
Petition Of National Railroad Passenger Corp., Central Vermont Railway, Inc., The State Of Vermont, And Windsor Minerals, Inc. For Rehearing And Suggestion For Rehearing *En Banc*	Filed September 24, 1990
Letter From Counsel For National Railroad Passenger Corp. Advising Of Additional Authority Pursuant To FRAP 28(j)	Filed October 29, 1990

Motion Of Respondents ICC And United States Of America For Leave To File Supplemental Memorandum In Support Of ICC Petition For Rehearing With Suggestion For Rehearing *En Banc*	Filed December 4, 1990
Motion Of National Railroad Passenger Corp., Central Vermont Railway, Inc., The State Of Vermont, And Windsor Minerals, Inc. For Leave To File Supplement To Petition For Rehearing And Suggestion For Rehearing *En Banc*	Filed December 4, 1990
Per Curiam Order That The Motions Of ICC And National Railroad Passenger Corp., *et al.* For Leave To File Supplements To The Petitions For Rehearing And Suggestions For Rehearing *En Banc* Are Granted. The Clerk Is Directed To File The Lodged Supplements.	Entered December 12, 1990
Opposition Of Boston & Maine Corp. To The Petitions For Rehearing And Suggestions For Rehearing *En Banc*	Filed December 27, 1990
Per Curiam Order Of The *En Banc* Court Denying Suggestions For Rehearing *En Banc*	Entered February 1, 1991
Per Curiam Order Denying Petitions For Rehearing	Entered February 1, 1991
Per Curiam Opinion For The Court Denying Petitions For Rehearing	Entered February 1, 1991
Separate Statement Filed By Circuit Judge Ruth B. Ginsburg	Entered February 1, 1991

Judgment For The Court That The Petitions For Rehearing Are Denied, In Accordance With The Opinion For The Court Filed Herein This Date	Entered February 1, 1991
Motion Of Respondents ICC And United States Of America To Stay Issuance Of The Mandate	Filed February 6, 1991
Motion Of National Railroad Passenger Corp. And Central Vermont Railway, Inc. To Stay Issuance Of The Mandate	Filed February 7, 1991
Per Curiam Order That Upon Consideration Of The Motions For Stay Of Mandate It Is Ordered That The Clerk Is Directed To Withhold Issuance Of The Court's Mandate Through March 11, 1991. Ruth B. Ginsburg, Buckley And D.H. Ginsburg, CJs.	Entered February 25, 1991
Notification To Court By National Railroad Passenger Corp. And Central Vermont Railway, Inc. Of Filing Of Petition For *Certiorari*	Filed March 11, 1991
Notice To Court Of Filing Of National Railroad Passenger Corp./ Central Vermont Railway, Inc. Petition For *Certiorari* Dated March 11, 1991 From U.S. Supreme Court (No. 90-1419)	Filed March 18, 1991
Application Of Respondents ICC And United States Of America For An Extension Of Time Within Which To File Petition For A Writ Of *Certiorari*	Filed April 24, 1991

Notification To Court Of Filing Of ICC/United States Of America Petition For *Certiorari* Dated May 16, 1991 From U.S. Supreme Court (No. 90-1769)	Filed May 21, 1991

BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D.C.

Finance Docket No. 31250

THE NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)—CONVEYANCE OF BOSTON AND MAINE CORPORATION INTERESTS IN CONNECTICUT RIVER LINE IN VERMONT AND NEW HAMPSHIRE

VERIFIED STATEMENT OF JAMES L. LARSON

My name is James L. Larson. I reside at 12820 Westside Road, Manassas, Virginia. I am employed by the National Railroad Passenger Corporation ("Amtrak") as Assistant Vice President - Contract Administration and Operations Planning in Washington, D.C.

A. Personal Qualifications

I joined Amtrak in 1973 and have served in my present position since 1975. Prior to joining Amtrak I was employed for 20 years in the Operating Department of the Chicago and North Western Railway/Transportation Company. The preponderance of the time I was with the Chicago and North Western was in line management in transportation supervision.

In my present position, I am responsible for the negotiation and administration of Amtrak's operating agreements with the railroads over which Amtrak passenger trains operate throughout the United States, and with commuter authorities and freight railroads operating on Amtrak's rail lines. I am also responsible for operations

planning for all operations outside of the Northeast Corridor. I serve as chairman of Amtrak's transportation and engineering team that evaluates all potential rail lines for the implementation of rail passenger service. This assignment, now in its tenth year, has resulted in the evaluation of approximately 50,000 miles of railroad routes throughout the United States. I also developed and negotiated the facilities plan used by Amtrak and Conrail for Northeast Corridor operations. In addition to the negotiation of operating agreements, I am also involved with the negotiation of schedules, schedule modifications, and the implementation of new routes for Amtrak trains, including capital expenses as well as operating requirements. I am thoroughly familiar with Amtrak operations throughout the United States including the former operation of Amtrak's Montrealer over the rail Lines of the Boston and Maine Corporation ("B&M"), and Central Vermont Railway, Inc. ("CV").

B. Purpose Of Statement

Amtrak's Montrealer is not currently operating north of Springfield, Massachusetts. Service through western Massachusetts, Vermont, New Hampshire and to and from Montreal, P.Q. was discontinued on April 5, 1987 due to an impending Connecticut River flood. Subsequently, on April 20, 1987, I participated in an inspection of the rail line between Springfield, Massachusetts and Windsor, Vermont with Mr. Herbert F. Longhelt, Amtrak's Deputy Chief Engineer and Boston and Maine representatives. At the conclusion of that trip, Mr. Longhelt and I concluded that the condition of the rail line between Springfield and East Northfield, Massachusetts and between Brattleboro and Windsor, Vermont had deteriorated to such an extent that we could not recommend restoration of passenger train service due to the extent and severity of the slow orders. This was the direct result of the refusal by B&M and its parent, Guilford Transportation Industries ("Guilford"), to maintain the B&M trackage on the Connecticut

River Line between Springfield and Windsor, Vermont to a standard of utility that would permit reasonably expeditious and marketable schedules for passenger train operations.

The Montrealer was cancelled after nearly two years of effort by Amtrak to persuade B&M and Guilford officials to honor commitments to Amtrak made by their predecessors in 1977 and assumed by them when they warranted to this Commission in 1981 and 1982 that their acquisition of the B&M and the Delaware & Hudson Railway ("D&H") would have no adverse impact on rail passenger service.[1] Those unsuccessful efforts, as well as the failed attempt of last summer to reach a basis upon which $5 million of Federal grant money could be expended to upgrade the rail line, persuaded me that there was no prospect for restoring reliable, efficient and economical passenger train service on this line through voluntary agreement with B&M or Guilford. I believe that the Montrealer will never run again unless ownership of the Brattleboro to Windsor segment of the Conn River Line[2] changes.

This verified statement will describe Amtrak's reasons for resorting to use of its authority under Section 402(d) in this case. I will explain why there should be no delay by this Commission in issuing an order requiring B&M to convey the interests in the Conn River Line sought in this proceeding. B&M cannot sustain its burden with respect to either of the two narrow issues, both of which it must

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[1] *See* Application, *Guilford Transportation Industries, Inc. - Control - Boston & Maine Corporation, Debtor and Maine Central Railroad Company*, ICC Finance Docket 29720 (Sub No-1), Exhibit A-16 at 87-88 and Exhibit A-17 at pp. 60-61; and Application, *Guilford Transportation Industries, Inc.-Control-Delaware & Hudson Railway Co.*, ICC Finance Docket 29772, Exhibit A-17 at 93.

[2] "Conn River Line" or "Line" refers specifically to that portion of the Connecticut River Line between Brattleboro and Windsor, Vermont which is owned by B&M and is the subject of a joint trackage agreement between B&M and CV.

establish if it is to rebut the presumption of Amtrak's need for the property. B&M's freight operations will be improved—not impaired—as a result of this acquisition. Moreover, Amtrak has no alternative for routing of the Montrealer and must acquire the interests specified in the Section 402(d) Application if the Montrealer is to operate again.

I will also explain Amtrak's plan for restoring Montrealer service once the interests in the Conn River Line are acquired and our arrangements with CV which are central to that process. Herbert Longhelt, Amtrak's Deputy Chief Engineer, will describe the results of his inspections of the Line over the past several years for purposes of confirming the rapidly deteriorating condition of the Line. Amtrak's valuation experts from R.L. Banks and Associates will explain their study of the Conn River Line and present their estimate of the compensation Amtrak should be required to pay for the interests in the Line. Finally, Mr. Phillip C. Larson, General Manager of CV, will confirm CV's readiness and willingness to live up to its commitments to Amtrak under the various agreements between the parties, including the obligation to honor the terms of the trackage rights agreement which will permit B&M to continue its existing freight operations over the Line. Mr. Phillip Larson will also provide certain operating information relating to the CV and B&M use of the Conn River Line, which supports the reasoning and logic of the valuation study.

C. The Need To Restore The Montrealer And To Resort To Section 402(d)

Amtrak commenced daily, two way Montrealer service between Washington and Montreal through western Massachusetts, Vermont and New Hampshire in response to public demand and congressional direction in September, 1972. Prior to its discontinuance in April 1987, the Montrealer attracted a significant ridership, largely made up

of passengers seeking access to the Vermont and New Hampshire resort areas, students, visitors to the cities and towns located along its route, local residents for transportation to other points on the Amtrak system, as well as passengers desiring international service to and from Montreal. The train, while never profitable for Amtrak, did stay within congressionally imposed cost parameters. It was the only rail passenger service operating in either Vermont or New Hampshire.

Congress has expressed its desire for Amtrak to restore Montrealer service north of Springfield, Massachusetts by appropriating $5 million expressly for that purpose in July 1987 in Public Law 100-71. Amtrak is committed to fulfilling this congressional mandate, but has concluded that the only way to do so is through use of its authority under Section 402(d) of the Rail Passenger Service Act.

Amtrak offered to acquire certain Conn River Line property interests from Guilford as detailed in a letter dated March 18, 1988. A copy of that letter is attached as Exhibit 1 to this Statement. Guilford's response came by letter dated March 29, 1988 from its CEO, David A. Fink. A copy of his letter is attached as Exhibit 2.

Mr. Fink asserts that Amtrak does not need to acquire the Conn River Line interests subject to this Application because now Guilford is prepared to deal in good faith, to upgrade the Line with Federal funds and to permit the Montrealer to operate over B&M lines, provided Amtrak increases the level of compensation to reimburse B&M for the costs imposed by maintaining the Line for Amtrak's operation. Mr. Fink went on to assert that Amtrak "unilaterally and abruptly decided to cease its operation of the Montrealer in April, 1987 . . . ." Amtrak responded the following day by inviting Mr. Fink to inform us immediately if we were to read his letter as anything other than a rejection of our March 18, 1988 offer. *See*, Exhibit 3. Amtrak has received no further response.

The following section of my statement will describe the lengths to which Amtrak has gone to preserve the Montrealer in conjunction with Guilford. Amtrak has concluded it cannot do business with Guilford. Fortunately, this Commission need not delay its deliberations to resolve whether in fact this is the case. The Rail Passenger Service Act permits Amtrak to condemn these property interests unless Guilford can show that the acquisition will impair their operations and that Amtrak can acquire alternative property for routing the Montrealer consistent with its obligation to provide efficient and economical service.

D. The Conn River Line's Significance To The Montrealer And How It Was Permitted To Fall Into Disrepair Under Guilford Ownership

1. Route Of Montrealer

Since the commencement of service in 1972, Amtrak operated the Montrealer along the Northeast Corridor between Washington and Springfield, Massachusetts. North of Springfield the train operated over B&M trackage to East Northfield, Massachusetts. The route then followed the CV trackage between East Northfield and Brattleboro, then the Conn River Line and then a CV segment between Windsor and White River Junction. The train operated under the control of B&M over the entire segment between of [*sic*] East Northfield and White River Junction even though B&M owned only the portion of the line between Brattleboro and Windsor, Vermont. The B&M also provided the train dispatching between East Northfield, Massachusetts and White River Junction, Vermont including the two short segments of CV owned tracks. CV assumed control of the Montrealer at White River Junction for movement north through Vermont to a point near the Canadian border where control of the train was assumed by the Canadian National Railway Company. A map of the Conn River Line and a regional map showing the line

in relation to other lines in the area are attached as Exhibits 4 and 5 to this statement.

2. Agreements Governing Operation Over Connecticut River Line

The agreement governing operation of the Montrealer between Springfield and White River Junction was originally executed in 1973 when B&M was in the process of bankruptcy reorganization. The original agreement provided for special payments to assist in the upgrading of the line to improved standards. In 1977, with B&M still in reorganization, I negotiated a substitute operating agreement with B&M's then Chief Operating Officer, Alan Dustin, which governed the operation of the Montrealer until its termination in 1987. The Operating Agreement, in the level of utility provision (Section 7.2), specified the passenger train speeds, by milepost location. B&M agreed to maintain its rail lines to permit passenger trains to operate "at not less than" the prescribed speeds subject to permanent local operating restrictions.

The agreement also provided for maintenance payments significantly higher than Amtrak's normal payments in recognition of the fact that the tracks were maintained to an improved level of maintenance. Even so, in 1977 the Connecticut River Line was B&M's second most important freight route, providing a through route for traffic moving between Canada and central New England and beyond.

The train schedules agreed to in the 1977 B&M Operating Agreement covering operation of the Montrealer between Springfield and White River Junction were those effective October 31, 1976. A copy is attached as Exhibit 6. This schedule was the basis for reporting on-time performance and for determining the amount, if any, of performance payments earned each month by B&M for operating the service on time. There were a number of factors to be considered in the determination of whether a particular train was on time, but it is significant to note

that B&M received an allowance for the time a train was delivered late by a connecting carrier at either Springfield or White River Junction, and the performance reported was actually based on whether the train made scheduled contract running time over the B&M segment of its route.

The October 31, 1976 schedules show a running time from departure at the initial B&M station (either White River Junction or Springfield) to arrival at the final B&M station of three hours twenty minutes for northward Train No. 60 and three hours fifteen minutes for southward Train No. 61. Subsequently, some minor schedule changes have been made.

Summarized in Exhibit 7 is the Contract On-Time Performance of the Montrealer over the B&M between Springfield and White River Junction by months for the years 1975 through 1986. A review of the on-time performance shows clearly that the contract schedules were realistic and achievable and that B&M generally operated the Montrealer at an acceptable level of performance for a number of years. In fact, during several years, B&M's on-time performance exceeded the Amtrak System Average.

3. Guilford Acquisition Of Conn River Line And The Impact On Service

Guilford acquired B&M on June 30, 1983 and the Delaware and Hudson Railway ("D&H") in January 1984. With the D&H's alternative route for Canadian traffic west of Lake Champlain, the Conn River Line lost the importance as a freight line to the Guilford system that it once had for B&M. During the period which Guilford's applications for control were before the Commission and shortly thereafter, the performance of the Montrealer was inconsistent. Overall, on a year-to-year basis, it was below the performance for the years 1977 through 1981.

During 1985, on-time performance deteriorated during the summer months due primarily to delays from slow

orders and the result of compounded delays from meeting the opposing Montrealer.[3] Also during that period, Amtrak began to hear of Guilford's plans to divert Canadian-New England freight traffic from the Conn River Line to the alternate route via the D&H.

In my routine contacts with B&M's Vice President-Operations, S.B. Culliford, who was also designated by B&M as their NRPC Operations Officer (Amtrak liaison), I expressed my concerns over conditions on their segments of the Connecticut River Line. I also personally made a trip over the line in the locomotive cab of Train No. 60 and arranged for two Amtrak officers to make a Hy-Rail Inspection of the line with a B&M engineering officer. The Amtrak officers were E.C. Rudolph, Director of Engineering, and A.L. Clark, Director of Contract Operations. Mr. Rudolph's October 22, 1985, report is included as Exhibit 8.

The most serious of the ten existing slow orders was a 5.8 mile long, 10 mph restriction (subsequently raised to 15 mph for passenger trains). This slow order was primarily the result of tie damage from a derailed freight car wheel which severely damaged numerous ties. I was advised by Messrs. Rudolph and Clark that the B&M engineering officer stated that his request for ties to permit removal of this slow order has been denied. During this trip, the diversion of B&M freight traffic from the Connecticut River Line was confirmed. It was apparent to me that B&M had adopted a policy to defer maintenance, allowing the condition of the line to deteriorate.

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[3] The schedules of the Montrealer, since it was inaugurated in October 1972, have required the northbound and southbound trains to meet each night on the B&M's Connecticut River Line, which is essentially single track. Although the schedules provide for the meeting under normal circumstances, a late train in one direction can cause further delay to a train in the opposite direction.

Amtrak arranged a meeting with senior Guilford/B&M officers in New York City on December 6, 1985. The Guilford officers were Mr. D.A. Fink, Chairman, President & Chief Executive Officer and Mr. G.E. Hartsoe, Executive Vice President & Chief Operating Officer. At this meeting, Amtrak expressed its serious concerns as to both the present condition and the future of the Connecticut River Line and its impact on the operations of the Montrealer. Amtrak also made the point that B&M was not in compliance with its contractual obligations per its 1977 Agreement with Amtrak.

The Guilford/B&M response was that the Connecticut River Line did not require additional work to meet B&M's needs for freight train operations, that no significant maintenance program was planned for the line and that if Amtrak was concerned about the condition of the line, Amtrak should consider purchasing the line. The Guilford officers did not indicate that they had any plan which would restore the line to its former condition.

On-time performance of the Montrealer continued to be unsatisfactory during January and February 1986, at roughly the same performance levels as 1985. In March, B&M became embroiled in a strike which had its origins on Guilford's Maine Central Railroad. For a period of time, the Montrealer did not operate north of Springfield. Service was restored on May 24, 1986. Not one train met its contractually agreed upon schedule after April 1986!

Amtrak exhibited patience with B&M following the strike and their efforts to resume service. It appeared reasonable to give B&M the benefit of the summer work season to improve conditions on the Connecticut River Line. However, with no apparent improvement being made, I arranged for a member of my staff, Mr. G.A. Forero, to go to B&M's headquarters in North Billerica, MA in September 1986 to quantify the slow order situation. His report, dated October 20, 1986, is enclosed as Exhibit 9. This

report shows that speed restrictions on the Connecticut River Line, as shown in a monthly report of temporary speed restrictions from the office of the Vice President of Engineering, increased from no mileage restricted on January 21, 1985, to 14.9 miles on June 23, 1986, to 91.4 miles on July 21, 1986 to 93.8 miles as of September 26, 1986. The above mileage, to some degree, includes trackage under a speed restriction which is not lower than speed agreed to in the 1977 Agreement.

The Forero report also contains a tabulation of trackage showing the location and extent of speed restrictions in effect September 29, 1986 along the Connecticut River Line, (as shown in the Temporary Speed Restriction Summary contained in Guilford's Administrative Message No. 926). This tabulation shows that 81.4 track miles out of a total (including double track) of 107.0 track miles, or 76.1%, were slow ordered below speeds agreed to by B&M in the Amtrak/B&M 1977 Operating Agreement. Also tabulated are the miles of track restricted to various speeds. It shows 20.2 miles restricted to a maximum speed of 10 mph and 9.0 miles restricted to a maximum of 15 mph.

In like manner, a similar evaluation of slow orders performed just after cessation of the Montrealer showed a total slow order mileage of 83.0 miles (or 77.6%) were slow ordered below the contract speeds. The slow orders included 1.0 mile at 5 mph, 24.8 miles at 10 mph, and 6.0 miles at 15 mph. At that time, Amtrak trains could only average 25.85 mph between Springfield and East Northfield and 17.27 mph between Brattleboro and Windsor. The overwhelming impact of such slow trackage on passenger train performance on the 123 mile route between Springfield and White River Junction was highly detrimental to the performance of the Montrealer. Clearly, operating passenger trains at average speeds of 26 mph and 17 mph is unacceptable from an operating standpoint and not competitive from a marketing standpoint.

4. Effect Of Slow Orders

The on-time performance of the Montrealer in the first three months of 1981 ranged between a very satisfactory 95.2% and a moderately acceptable 78.6%. I have tabulated in Exhibit 10 the slow orders, as compared to Amtrak contract speeds, existent in March 1981, versus those in effect April 20, 1987. I have also developed a "severity index"[4] to compare the relative impact upon train performance of reduced speeds and lengths of various speed restrictions.

In March 1981, Exhibit 10 shows 5.8% of the B&M track miles between Brattleboro and Windsor are slow ordered. That results in a severity index of 87. The performance at that time indicated that the then existing level of slow orders was generally acceptable, *i.e.*, time lost was less than recovery time built into the schedule and on-time operation was normally achieved. In comparison, slow orders in effect on this line segment on April 20, 1987, totaled 98.6% of the track miles, computing to a 2501 severity index. Comparing April 1987 with March 1981 indicates an increase in the magnitude of slow order restrictions over that 61-month period 17 times greater as measured by track miles or nearly 29 times greater as measured by the severity index.

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[4] The severity index is defined as the sum of the products of the lengths of restrictions times speed differences (contract vs. restriction) per 100 track miles, as shown in the following formula:

$$SVI = \Sigma \frac{100 \left(\Delta \text{ speed} \right) \times L}{TM}$$

Where: SVI = Severity Index

Δ Speed = Timetable speed less slow order speed

L = Length of slow order in miles

TM = Total Track miles in segment evaluated

Since last year the line segment between Brattleboro and Windsor has deteriorated even further with 30.7 of the 48.5 miles subject to 10 mph speed restrictions as of March 3, 1988. The severity index as of that date was 3045.

As a comparison, we calculated the severity index for the Central Vermont maintained rail lines between East Northfield and St. Albans, Vermont, 141.5 miles. On April 20, 1987, the CV Severity Index was 5, and on March 3, 1988, the CV index was zero.

When one focuses on the fact that on-time performance was zero percent between May, 1986 and April, 1987 it becomes possible to realize the terrible impact of these extensive slow orders on the performance of the Montrealer.

Exhibit 11 graphically depicts the running time required to operate Train No. 61 from White River Junction to Springfield with the speed restrictions in effect in March 1981 versus those in effect in April 1987. It shows that the southbound Montrealer begins to lose time as soon as it reaches the B&M maintained track at Windsor Interlocking and requires 30 additional minutes into Bellows Falls, Vermont. Extensive slow orders on the B&M between Bellows Falls and Brattleboro resulted in Train No. 61 requiring 103 additional minutes to reach Brattleboro from White River Junction as compared to early 1981. Arrival in Springfield required 129 additional minutes, an increase in required running time from 191 minutes to 320 minutes or an increase of 67%. Based upon March 1988 speeds, the negative impact upon schedule performance would be even greater.

Amtrak informed Guilford in January 1987 that the condition of the Connecticut River Line was unacceptable and that is was imperative that Amtrak receive Guilford's commitment to increase maintenance during the 1987 maintenance season to remove the slow orders on a priority

basis. *See* Exhibit 12 to this Statement. Although the letter asked for a reply by the end of the month, it was not until March 23, 1987 that B&M informed Amtrak that during 1987 there would be no significant expenditures on the Conn River Line to eliminate existing speed restrictions and that, "[n]o appreciable increase in track speed is anticipated." *See* Exhibit 13. With no improvement in conditions forthcoming, Amtrak reluctantly concluded that the line was not suitable for passenger train operations north of Springfield after my April 20, 1987 inspection.

Exhibit 14 is my report of April 22, 1987 to Amtrak's management summarizing the results of the April 20 inspection trip and concluding that the B&M rail line condition would not permit restoration of Montrealer service. Mr. Longhelt explains from the perspective of an experienced railroad engineering officer the deterioration of the Line while under Guilford control in his Verified Statement and provides an update of conditions.

E. Amtrak's Evaluation Of Alternative Routes

Subsequent to the decision that the Connecticut River Line was not in a satisfactory condition for passenger train operations, I performed an analysis of Amtrak's routing options for restoring Montrealer service. The only two possible alternate routes that could serve the State of Vermont were identified as follows:

Alternate Route 1

Boston and Maine Connecticut River Line between Springfield and East Greenfield, Massachusetts; B&M Freight Main Line between East Greenfield, Massachusetts, and Hoosick Junction, New York; thence over the Vermont Railway between Hoosick Junction, New York and Burlington, Vermont and Central Vermont Railway between Burlington and Essex Junction, Vermont.

Alternate Route 2

Boston and Maine-Central Vermont Railway Connecticut River Line between Springfield, Massachusetts, and Bellows Falls, Vermont; thence over the Green Mountain Railroad to a connection with the Vermont Railway at Rutland, Vermont. This route would then follow the same route as Alternate Route 1 using the Vermont Railway between Rutland and Burlington, Vermont and the Central Vermont Railway between Burlington and Essex Junction, Vermont.

The alternate routes are shown on Exhibit 15. Both the Green Mountain Railroad and the Vermont Railway were contacted by Amtrak to determine their current status and speeds. In addition, Amtrak reviewed the operating timetables of both railroads and determined that neither alternative was viable as an alternative route.

Alternate Route 1 still required operating over a substantial portion of the slow ordered Connecticut River Line between Springfield and East Greenfield. The Vermont Railway line between Hoosick Junction and North Bennington is restricted to 10 mph and North Bennington to Arlington is restricted to 25 mph, while the balance of the Vermont Railway line is restricted to 40 mph. The old non-controlled cooled, jointed rail on the Vermont Railway line, which is unsignalled, was also an area of concern. We concluded that the circuity of the route, as well as the slow operating speeds, would actually result in schedules that would be longer than the slow ordered Connecticut River Line.

Alternate Route 2 posed similar problems. Access to the Green Mountain Railroad at Bellows Falls would require operating over approximately 70 percent of the slow ordered Connecticut River Line north of Springfield, Massachusetts, before reaching Bellows Falls. The Green Mountain Railroad restricts passenger trains to 30 mph between Bellows Falls and Rutland, while the Vermont Railway is restricted to 40 mph between Rutland and Bur-

lington. The Green Mountain Railroad also has non-controlled cooled, jointed rail similar to the Vermont Railway and is also unsignalled. Again, we concluded that this alternate route would also be longer in time than the existing slow ordered Connecticut River Line.

Both alternatives would require significant operations over the Connecticut River Line before reaching the alternative connections at Greenfield or Bellows Falls.

Using a reasonable engineering estimate that $250,000 per mile as the normal cost for rail replacement, it can be seen that the need to replace 100 or more miles of rail becomes cost prohibitive, not to mention the cost of other upgrading that, most likely, would be essential before satisfactory passenger train speeds comparable to those to be obtained on the restored Connecticut River Line could be attained.

This left Amtrak with pursuing restoration of the Montrealer passenger train service over a restored Connecticut River Line as the only viable alternative.

F. Unsuccessful Efforts With Guilford To Reestablish Montrealer Service

Amtrak pursued two courses with Guilford to get the train back in operation. On April 27, 1987, Amtrak initiated an arbitration proceeding before the National Arbitration Panel seeking damages and specific enforcement of the 1977 operating agreement between Amtrak and B&M. B&M responded by notifying Amtrak on May 6, 1987 of its intention to terminate the agreement, and by seeking to enjoin the arbitration proceeding in actions in the United States District Courts in both Boston and the District of Columbia.

Although B&M's motions to stay the arbitration proceedings have been denied, B&M is still pressing an appeal in the Court of Appeals for the District of Columbia. After

almost a year of litigation, the arbitration proceeding is still in its preliminary stages.

The second course was more conciliatory, but had the same result. Congress appropriated $5 million in July 1987 to enable Amtrak promptly to begin repair work on the Connecticut River Line in order to permit restoration of Montrealer service north of Springfield. I attempted to initiate discussions with B&M officers over the appropriate use of these funds.

A meeting was convened at Guilford's headquarters in North Billerica, Massachusetts on July 20, 1987, where I met with David Fink and his key staff members. Because Amtrak was considering routing alternatives south of East Northfield for the Montrealer, we indicated that we were interested in determining whether there was a basis upon which Guilford would agree to perform the work on the segment between Brattleboro and Windsor or permit a third party to do the work. Mr. Fink made it clear that if there was to be any work performed, it would have to be done by Guilford. He also indicated at that meeting that Guilford was currently conducting a study regarding possible abandonment of the Connecticut River Line between Deerfield, Massachusetts and Wells River, Vermont which would have included the segment between Brattleboro and Windsor.[5] Mr. Fink emphasized to me that Guilford was unwilling to accept any of the funds appropriated for the rehabilitation until it had an agreement with Amtrak covering the future maintenance costs of the line. B&M/Guilford did not have an estimate of the cost of rehabilitating the line. We scheduled a second meeting to be held on July 29, 1987 at which time the cost of rehabilitation and the terms of a new operating agreement were to be discussed. A copy of my memorandum to D.F.

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[5] The Line was subsequently identified on B&M's System Diagram Map as a Category 1 initial candidate for abandonment and remains so identified to this date.

Sullivan, Amtrak's Vice President-Operations and Maintenance, is attached as Exhibit 16.

Guilford cancelled that meeting on July 27, 1987 purportedly because the word of our previous meeting had been disclosed in a press report. My letter of July 29, 1987 to B&M's Vice President-Transportation expressed my regret over the cancellation of the meeting and assured him that Amtrak was not responsible for the public disclosures. I concluded by requesting that Mr. Stoetzel specify the basis, if any, he would be willing to meet with Amtrak. A copy of my July 29 letter is attached as Exhibit 17. A month passed and Mr. Stoetzel responded that B&M "sees no purpose in holding another meeting on the subject of the Montrealer . . .", although he closed the letter with a somewhat inconsistent indication that B&M would be "happy" to meet. A copy of Mr. Stoetzel's letter dated September 1, 1987 is attached as Exhibit 18. By the time of Mr. Stoetzel's letter, Amtrak has concluded that no agreement could be reached with Guilford so we did not attempt to resolve the ambiguity. No subsequent meetings were held with Guilford.

G. Amtrak's Arrangements With CV

Amtrak turned to CV to develop a plan to restore the Montrealer because CV's performance under its agreement with Amtrak for operating the Montrealer between White River Junction and the Canadian border had been exemplary. The trackage was maintained to Amtrak's standards and CV's on-time performance regularly exceeded 95 percent. CV's freight operations are dependent upon the Conn River Line, and it is reasonable to assume that CV will share Amtrak's interest in retaining a high level of maintenance on the Line once it is upgraded with Federal funds.

On March 18, 1988, Amtrak and CV reached three separate agreements governing various aspects of our relationship. One agreement deals with the acquisition of the

Conn River Line interests by Amtrak pursuant to either voluntary agreement with B&M or an order issued by this Commission under Section 402(d). Amtrak will convey these interests to CV upon reimbursement by CV of the compensation ordered by the Commission or agreed to by B&M. CV has committed an amount of funds which Amtrak believes exceeds the level of just compensation which this Commission would order be paid to B&M. However, those funds are limited and should the Commission order compensation in excess of the level of compensation supported by Amtrak's valuation experts, Amtrak has retained the option of not proceeding to acquire the property. Once CV acquires the property from Amtrak it will rehabilitate the Line to Amtrak's standards, utilizing a portion of the Federal funds appropriated for that purpose.

A second Amtrak/CV agreement provides for the rehabilitation of the Line by upgrading it to a level permitting speeds up to 59 mph between East Northfield and White River Junction. The upgrading work will be performed under Amtrak supervision, and payments will be approved only to the degree work is approved by Amtrak. The maximum contract price for the work north of East Northfield is $3.1 million, including installation of necessary communications and signal equipment to permit the CV to perform the train dispatching function. Amtrak will be providing equipment and materials which will reduce the out of pocket expense of the work below that figure. A serious concern is the continued degradation of the line pending resolution of the issues with limited funds allocated for rehabilitation of the Line which could prove inadequate.

The work on the Conn River Line is expected to be completed within one work season from the date CV obtains access to the property, depending upon weather and availability of materials. However, track upgrading cannot normally be performed during the winter months when the ground is frozen, generally from early November until

about April 1. I am informed that CV has had discussions with the Brotherhood of Maintenance of Way Employees and obtained their cooperation in assembling two large work gangs to complete the work as promptly as possible with flexible work rules.

The Montrealer will commence operations upon the completion of the upgrading work pursuant to an operating agreement with CV. Amtrak and CV have agreed upon a twenty year contract for the continued operation of the Montrealer, and CV has agreed to maintain the rail line to Amtrak's standards for the entire period or as long as the passenger train continues to operate during that period.

Amtrak is evaluating the options for routing the Montrealer south of East Northfield. The agreements with CV provide Amtrak the flexibility of selecting from among three potential routes. Amtrak is in the process of negotiating arrangements with the Commonwealth of Massachusetts which could result in the routing of the Montrealer over B&M trackage between Springfield and East Northfield. Our agreements with CV provide for alternative routing via Palmer, Massachusetts (utilizing Conrail trackage between Springfield and Palmer) or via New London, Connecticut, where CV's line intersects with Amtrak's Northeast Corridor line. If the arrangements with Massachusetts are not finalized, the train will be operated over one of these alternative routes.

H. B&M Will Suffer No Impairment Of Service

Amtrak has obtained CV's commitment to be bound by a trackage rights agreement which will permit B&M to continue its present operations over the Line once the property interests are conveyed to CV. A copy of that proposed agreement is attached hereto as Exhibit 19. Amtrak is prepared to accept this agreement as a term or condition which the Commission might set in its order requiring conveyance of the Line. With this agreement in

place, there will be no impairment of B&M freight operations. Indeed, those operations should benefit as a result of the improved track condition.

The agreement gives B&M full and exclusive[6] access to its existing shippers on the Line, and permits B&M to continue its interchange with railroads which intersect with the Line. CV will also retain the right to interchange with these carriers. There is no fixed or interest rental for use of the Line, and B&M will not pay for the investment of Federal funds which will be made.

Of course, the condition of the Line will improve vastly. With zone speeds at 40 mph for freight service and restoration of a siding which has been taken out of service, B&M operations will benefit. B&M crews operating out of East Deerfield, Massachusetts should no longer risk having to be relieved under the Hours of Service Act.[7]

There will be no problem of congestion on the Line. B&M operated three trains per week in each direction prior to the service disruption of last fall. CV will operate one or two trains per day in each direction over this route, and Amtrak will operate one train a day in each direction. The Line is presently equipped with centralized traffic control signalling between Brattleboro and Windsor and has sufficient capacity to handle not only the proposed service, but also a significant increase in traffic as well.

It is essential that the right to dispatch the trains between East Northfield and White River Junction on the

---

[6] CV will obtain the right to serve new shippers or facilities on the Line because it is highly unlikely that such facilities would otherwise locate along the Line due to the generally deteriorated condition of the track and with the possibility of future line abandonment. CV would obtain the right to jointly serve existing shippers on the Line in the event B&M's service deteriorates below levels specified.

[7] The Hours of Service Act prohibits train and engine crew employees from working more than 12 hours in any 24 hour period.

Conn River Line is acquired along with the physical assets between Brattleboro and Windsor. These rights must be acquired because adherence to schedules can only be insured by placing the dispatching authority with the party obligated to provide the service. In addition it is imperative that the train dispatching must be under the control of the party responsible for the track upgrading and continuing maintenance of way work. Access to the track for maintenance work is an essential element not only in the performance of the work but in controlling maintenance costs as well. The train dispatcher is the one person who controls access to the Line. The dispatching rights will be assigned by Amtrak to CV, and the proposed trackage rights agreement provides for nondiscriminatory handling of all traffic on the Line. *See* ¶ 7.4 of Exhibit 19.

I. There Is No Alternative Route Over Which Montrealer Service Can Be Restored.

The only option available to Amtrak for providing rail service to the region served by the Montrealer, consistent with our statutory mandate to provide efficient and economical passenger service, is to acquire B&M's interests in the Conn River Line. As we previously indicated the alternative rail routes for operation through Vermont are not viable for intercity passenger service and would further lengthen schedules even beyond those now required by the unacceptably slow Conn River Line. Acquisition of property from non-railroad owners and construction of an alternative route is not an option because of the excessive costs and the impossibility of providing efficient and economical passenger operations under such circumstances.

J. Conclusion

This Application represents an extraordinary step by Amtrak. However, the absence of suitable alternate routes makes this action necessary if rail passenger service is to be restored to northern New England. Guilford and B&M have indicated that the reduced maintenance on the line

is adequate to meet their operating needs. Unfortunately, Amtrak cannot successfully operate over a rail line in that condition. I believe, without the slightest hesitation, that the program we have outlined for restoration of the Montrealer serves the public interest, fulfills Amtrak's statutory mandate and complies fully with §402(d). In addition, it provides for an improved rail line that will benefit not only Amtrak but all freight carriers on the line. I hope that these facts are obvious from this Application and that the Commission can move promptly to permit the restoration work to commence.

VERIFICATION

City of Washington)
) ss:
District of Columbia)

James L. Larson, being duly sworn, deposes and states that he has read the foregoing statement, knows the facts asserted therein, and that the same are true and correct to the best of his knowledge and belief.

Executed at Washington, D.C., this [4th] of [April], 1988.

[Signature]
James L. Larson

Subscribed and sworn to before me this
[4th] day of [April], 1988.

[Signature]
Notary Public
My Commission Expires [Date].

[Exhibit 1 to Larson Verified Statement]

National Railroad Passenger Corporation, 400 North Capitol Street, N.W., Washington, D.C. 20001 Telephone (202) 383-3000

AMTRAK [Logo]

March 18, 1988

CERTIFIED MAIL

Mr. David A. Fink
Chairman & Chief Executive Officer
Guilford Transportation Industries, Inc.
Iron Horse Park
North Billerica, Massachusetts 01862-1690

Subject: *Offer to Purchase Connecticut River Line Interests*

Dear Mr. Fink:

As you know from our discussions since last spring, Amtrak desires to reinstitute Montrealer service upon completion of necessary upgrading on the Connecticut River Line. We have made no satisfactory progress towards reaching an agreement with Guilford concerning the terms for the prompt and economical rehabilitation of the line and restoration of operations over B&M property between Springfield and White River Junction. We have now reached agreements with the Central Vermont Railway that will permit restoration of service, but since the CV does not own or control operations over portions of the Connecticut River Line, we need to acquire certain interests in that line from B&M.

Amtrak hereby offers $1 million ($1,000,000.00) for purchase of the following property or contract interests from B&M or Guilford in the Connecticut River Line:

(1) all rights, titles and interests (with the exception of interests in existing fibre optics leases) in the

rail right of way and structures between a point where the CV owned trackage at the north end of the Connecticut River Bridge in Windsor, Vermont terminates (approximately B&M MP 108.3) and a point where CV owned trackage at Bridge Street in Brattleboro, Vermont (approximately B&M MP 60.1) commences;

(2) all rights, titles and interests in a spur track (known as the Brattleboro or West River Spur) and right of way extending from the CV right of way to a line ten feet east of the center line of the spur and approximately 1,300 feet south of Bridge Street in Brattleboro to the crossover to the CV owned trackage;

(3) the right to dispatch operations over the trackage between White River Junction, Vermont and East Northfield, Massachusetts secured to B&M by virtue of the trackage rights agreement between CV and B&M dated January 1, 1930 (1930 Agreement) and other informal operating arrangements between CV and B&M;

(4) rights under the 1930 Agreement to maintain and operate the segment of CV trackage between the point north of the Connecticut River Bridge where B&M owned trackage terminates (approximately B&M MP 108.3) and a point adjacent to the passenger depot at Windsor, Vermont (approximately B&M MP 108.9) where CV owned and maintained trackage commences; and

(5) all rights, titles and interests in the signalling system (including poles, wires and circuitry) between White River Junction and East Northfield, including approaches (track signalling circuitry) at White River Junction and East Northfield.

Amtrak proposes to acquire the referenced property and contract interest by quit claim deed and related documents

at a closing to be scheduled as soon as possible. Concurrent with such conveyance, B&M will be granted trackage rights for continuing its present freight operations over the line, including the sole right to serve shippers' facilities existing on the Line as of the date the property rights are conveyed. The right to serve new facilities and shippers coming into existence after the date of conveyance shall be reserved for CV. B&M will also be granted the right, along with CV, to interchange at Bellows Falls, Vermont with the Green Mountain Railroad (or its assignees or successors) and at Claremont Junction, New Hampshire with the Claremont and Concord Railway (or its assignees or successors). B&M's operating rights shall be subject to equitable arrangements for sharing maintenance and operating costs over the entire line, and rentals owed the state of Vermont for use of its property at Bellows Falls. No additional interest or fixed rental charge will be assessed for these rights. At or shortly after the closing, Amtrak will convey its interests in the property to CV, subject to these trackage rights.

Our offer to pay you $1 million reflects the value of Amtrak obtaining control of and access to the line promptly so that upgrading can commence as soon as weather permits, without the expense and effort entailed in a condemnation proceeding. Therefore, we believe our offer exceeds the level of "just compensation" required under Section 402(d) of the Rail Passenger Service Act, 45 U.S.C. § 562(d).

If you do not accept Amtrak's offer by executing a binding letter of intent by April 1, 1988, Amtrak will have to consider that it is unable to reach agreement with Guilford or B&M on the terms of the sale of property required for intercity rail passenger service. Pursuant to Section 402(d), Amtrak will then apply to the Interstate Commerce Commission for an order requiring conveyance of the property to Amtrak.

Your prompt attention to this offer would be appreciated.

Sincerely,

[Signature]
Dennis F. Sullivan
Vice President-Operations
and Maintenance

[Exhibit 2 to Larson Verified Statement]

Boston & Maine Corporation
Delaware & Hudson Railway Company
Maine Central Railroad Company

[Logo]

Iron Horse Park
No. Billerica, Mass. 01862

March 29, 1988

Dennis F. Sullivan, Vice President
—Operations and Maintenance
National Railroad Passenger Corporation
400 North Capitol Street, N.W.
Washington, D.C. 20001

Re: Connecticut River Line

Dear Mr. Sullivan:

In response to your letter to me dated March 18, 1988, this will confirm that I welcome the return of the Montrealer provided that Amtrak agrees to pay its fair share of the additional costs resulting from Amtrak's requirement that B&M substantially rebuild the Connecticut River Line to meet the unique speed requirements of Amtrak.

As always, I am willing to enter into negotiations promptly regarding the terms of compensation to be paid by Amtrak to operate the Montrealer over the property of B&M. I will expect, however, that both parties will enter those negotiations in good faith and will fully address the issue of payment of the costs of the additional annual maintenance required to be performed solely for the benefit of Amtrak. Once such an agreement is reached, I expect that Amtrak could resume operation of the Montrealer within a reasonable time.

When I discussed this matter last week with Mr. Larson, Amtrak's Vice President, I also suggested to him that if

for any reason Amtrak and B&M are unable to agree upon the amounts or apportionment of the additional expenses resulting from Amtrak's operation on the line, I am willing to permit a third party, such as the Interstate Commerce Commission, to establish the proper level of compensation.

It is unfortunate that virtually no realistic negotiations or discussions have been engaged in by Amtrak since it unilaterally and abruptly decided to cease its operation of the Montrealer in April, 1987 and promptly thereafter commenced the litigation which is still pending before the National Arbitration Panel. I hope that approach by Amtrak is a thing of the past and that we can now commence good faith negotiations.

In light of the above, it appears clear that there is no need to pursue the very complex "offer to purchase" set forth in your letter, nor to comment in detail on the inapplicability of Section 562(d) to this situation. Generally, however, you should be aware that the terms set forth in your letter raise several troubling issues, including, without limitation, the gross insufficiency of compensation, lack of specificity, excessive breadth and unnecessarily severe anti-competitive impact of the seizure, as well as the failure of the unilateral "take it or leave it" offer to satisfy the requirement of realistic, good faith negotiations prior to seizing our private property for the benefit of our direct competitor.

Please contact me promptly so that arrangements can be made for negotiation. I would also appreciate receiving from you for my review prior to the negotiations all public information which is available regarding the terms of the proposed agreements with CV as referred to in your letter and the terms of payments set forth therein.

Sincerely,

[Signature]

David A. Fink
Chairman and
Chief Executive Officer

sm
Federal Express

[Exhibit 3 to Larson Verified Statement]

National Railroad Passenger Corporation, 400 North Capitol Street, N.W., Washington, D.C. 20001 Telephone (202) 383-3000

AMTRAK [Logo] **VIA DHL EXPRESS**

March 30, 1988

Mr. David A. Fink
Chairman & Chief Executive Officer
Guilford Transportation Industries, Inc.
Iron Horse Park
North Billerica, MA 01862-1690

Subject: *Offer to Purchase Connecticut River Line Interests*

Dear Mr. Fink:

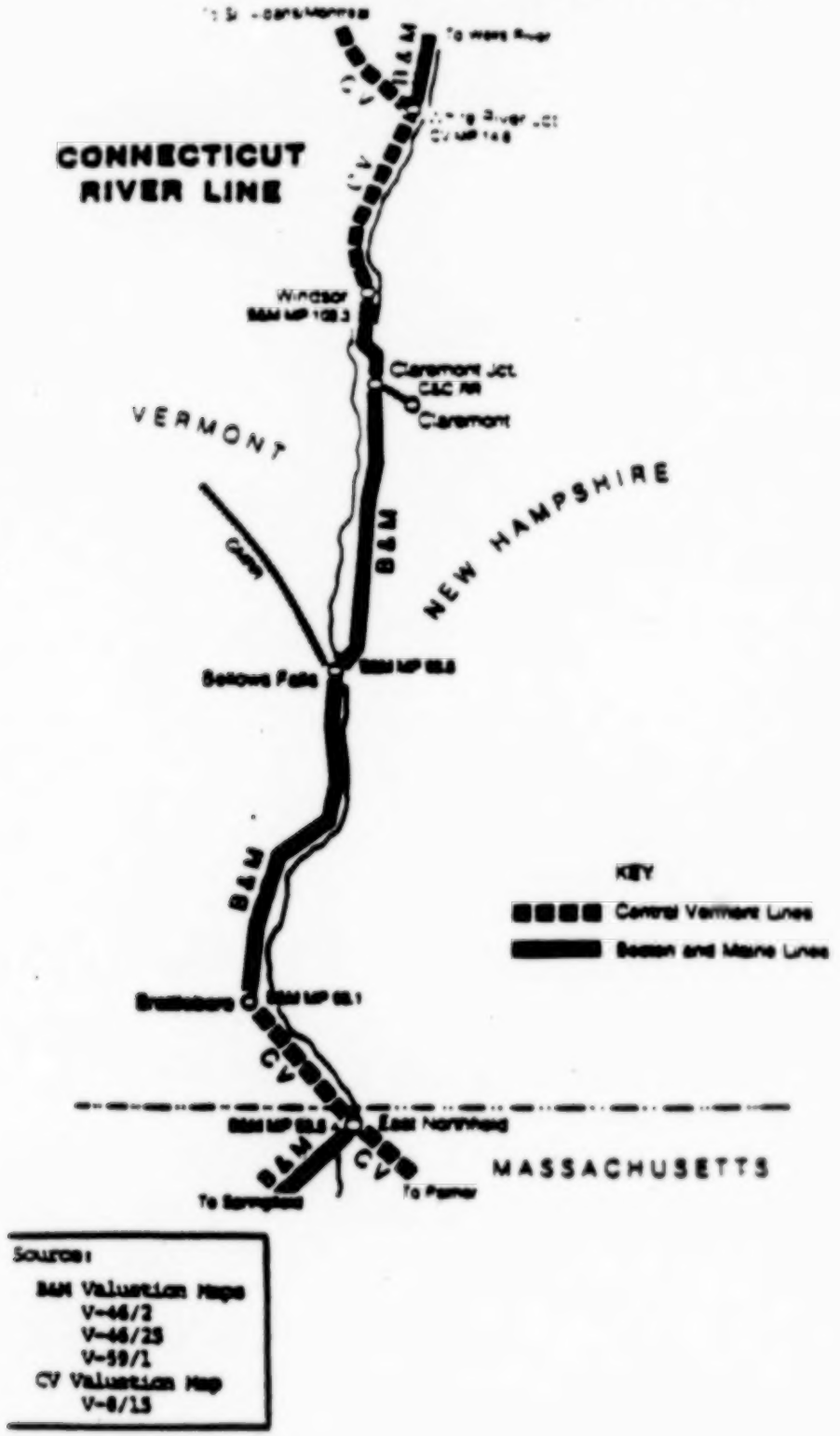
We interpret your letter dated March 29, 1988, as rejecting our offer to purchase the Connecticut River Line. If this interpretation is not correct, please contact me immediately. As indicated in my letter of March 18, 1988, if we do not receive a binding letter of intent by April 1st, we will proceed with our application to the Interstate Commerce Commission to acquire the Line.

Sincerely,

[Signature]

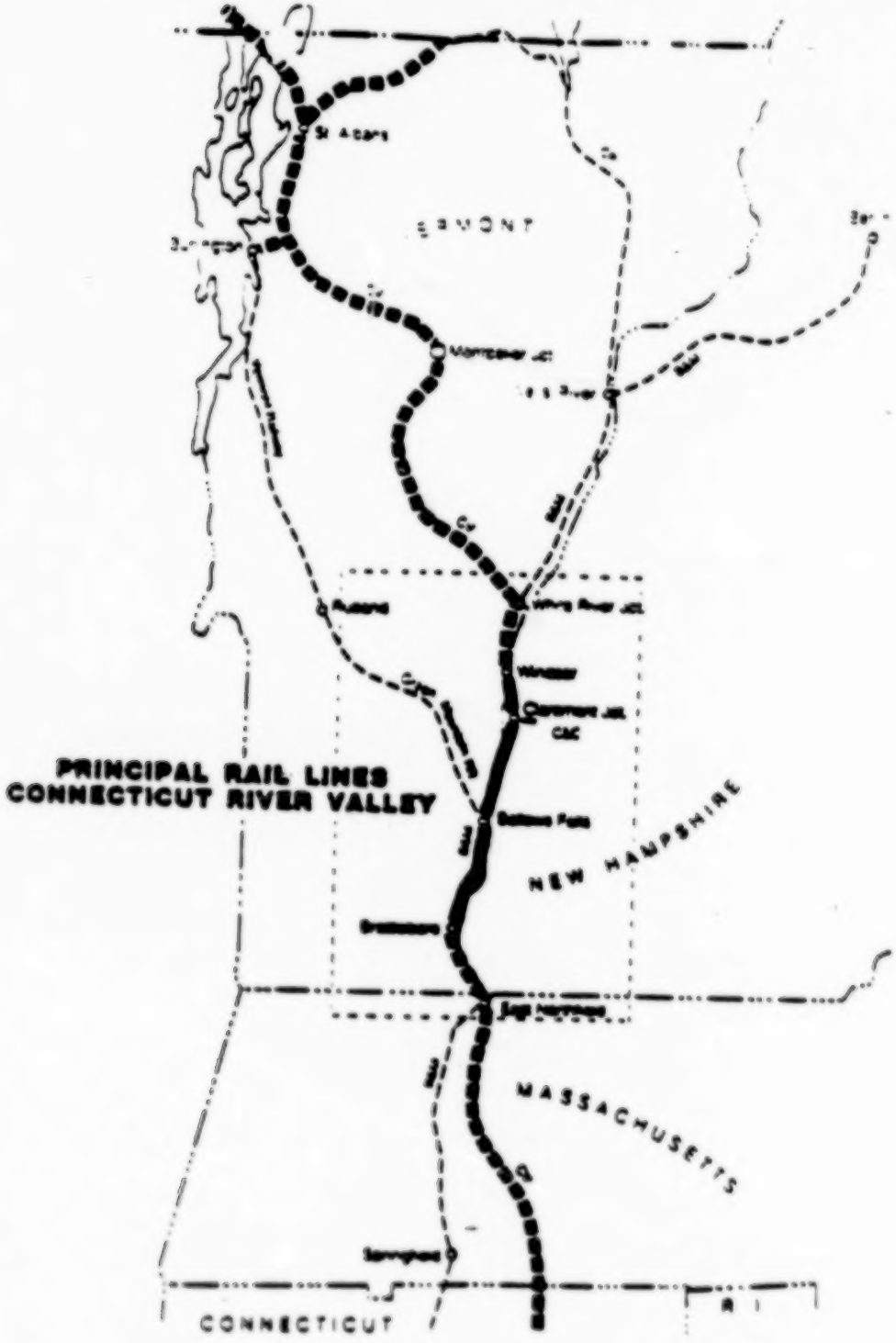
Dennis F. Sullivan
Vice President-Operations
and Maintenance

[Exhibit 4 to Larson Verified Statement]



BEST AVAILABLE COPY

[Exhibit 5 to Larson Verified Statement]



BEST AVAILABLE COPY

[Exhibit 18 to Larson Verified Statement]

Delaware & Hudson Railway Company
Maine Central Railroad Company

[Logo]

Iron Horse Park
No. Billerica, Mass. 01862

September 1, 1987

Mr. James L. Larson
Asst. Vice President
Contract Administration
Amtrak
400 North Capitol St., NW
Washington, DC 20001

Dear Mr. Larson:

In response to your letter of July 29, 1987, as I indicated to you during the telephone conversation referenced in your letter, the Boston and Maine sees no purpose in holding another meeting on the subject of the Montrealer for several reasons. Prominent amongst these was the fact that within hours of our last meeting on this subject, we received numerous telephone calls from media outlets in the Montrealer's service area asking very specific questions relative to issues that had been discussed at that meeting.

These inquiries indicated to us that Amtrak's assurances at that meeting that there would be no media involvement in these discussions had not been honored and that there was an attempt being made by Amtrak to bring public pressure to bear upon the B&M which would result in a settlement of these issues more favorable to Amtrak. B&M does not do business in this fashion nor do we negotiate our issues publicly in the media.

As has been stated on numerous occasions, we will be happy to meet with you to discuss the issue of the Mon-

trealer and would like to remind you that the Montrealer is not running at this time at Amtrak's express choice rather than due to any action on the part of the Boston and Maine Corporation. We do, however, insist that Amtrak observe the confidentiality of these negotiations and refrain from any attempt to bring outside media or political pressure upon the B&M in an attempt to obtain a settlement more favorable to Amtrak.

Sincerely,

[Signature]
J.R. Stoetzel
Vice President
Transportation

[RECEIVED]
[SEP 18, 1987]
J.L. LARSON]

cc: F. Colin Pease

BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D.C.

Finance Docket No. 31250

THE NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)—CONVEYANCE OF BOSTON AND MAINE CORPORATION INTERESTS IN CONNECTICUT RIVER LINE IN VERMONT AND NEW HAMPSHIRE

VERIFIED STATEMENT OF HERBERT F. LONGHELT

I am Herbert F. Longhelt. I am employed as Deputy Chief Engineer of National Railroad Passenger Corporation (Amtrak) with my office at Corporate Headquarters, 400 North Capitol Street, N.W., Washington, D.C. 20001.

1. Background and Job Responsibilities

I received a degree in Civil Engineering from the University of Illinois in 1947. My railroad experience includes 24 years working in various engineering positions with the Illinois Central, the Rock Island Railroads and more than 16 years with Amtrak. When I began at Amtrak as Chief Civil Engineer in 1971, I was the first engineering employee of the Company. During the course of the last 16 years I have helped to obtain and organize engineering personnel to create an engineering organization that is respected throughout the railroad industry. My primary duties during that time have included coordinating engineering matters as they relate to our nationwide operations over various contract carrier railroads. Since 1976

this position has required close coordination with Mr. James Larson's contract administration responsibilities.

One of my areas of responsibility is directing the development and operation of systems to monitor the track geometry and ride quality of Amtrak's routes. Amtrak had no such capability in its formative years. However, we have been able to develop a track geometry measuring system which is one of the best in the industry. The Amtrak track geometry car, a state-of-the-art car introduced in August 1985 has tested over 80,000 miles of track using an optical laser gauge, capable of measuring track variances, including through switches and over-road crossings. A computer on board the car provides geometry data in real time, and a location detection system pinpoints the defects.

2. Connecticut River Line Maintenance Agreement

My work at Amtrak has required me to become and remain quite familiar with the condition of Connecticut River Line ("the Line"), including the segment which Amtrak is seeking to acquire in this proceeding. Prior to the startup of the Montrealer service, I personally participated in the original 1972 inspection of the Line. From this inspection, and subsequent negotiations, a plan evolved whereby B&M would increase track speeds following tie and surfacing work, which was to be paid for by Amtrak. Track speeds to be achieved were specified by mile post locations.

When the B&M Operating Agreement was renegotiated in 1977, I assisted Mr. J.L. Larson in related engineering matters. Track speeds by specific mile post locations were also included in this contract; the speeds and limits were generally the same as those in the earlier contract. The 1977 Agreement also provided for Amtrak to pay B&M for track maintenance associated with maintaining the higher speeds provided by the 1973 Agreement and for a track patrol gang.

My information and continuing observations indicate the B&M met their contract maintenance obligations in a relatively satisfactory manner through 1981. Thereafter, slow orders became an increasing problem until 1986 when they became extensive, with no significant effort by B&M to correct the conditions which caused the slow orders.

3. 1986 Inspection of the Line

Concerned over the serious deterioration of the B&M line, I arranged for a special train to operate the Amtrak track geometry car over the Line on July 9, 1986. The following Amtrak personnel participated in this inspection trip:

R.C. Vanderclute - AVP Transportation
C.P. Wahmann - General Manager Operations & Maintenance Planning
S.A. Bruno - District Superintendent
R.L. Swoope - Division Engineer
H.F. Longhelt - Deputy Chief Engineer

The B&M representatives on this inspection trip were:

S.F. Nevero - Chief Engineer
R. Rice - Track Supervisor
T.E. Walker - Track Supervisor

The purposes of this inspection were to determine by actual measurement under load the track conditions on this line, to evaluate the slow orders vis-a-vis these track conditions, and to determine from B&M's engineering officers their plans for correcting these conditions.

Mr. S.F. Nevero, B&M's Chief Engineer, told me at that time there were no firm plans for major improvements of track conditions. He told me that defects found by this survey would probably be protected by slow order to comply with FRA standards, or that minimum work would be performed to bring it into compliance with FRA

Class I.[1] This position was completely unsatisfactory to Amtrak as it ignored B&M's contractual responsibility to maintain the track to the appropriate agreed upon speed.

4. 1987 Inspection of the Line

B&M continued to disregard its contractual obligations regarding maintenance of the Line throughout 1986. As a result, I requested R.L. Swoope, Amtrak's Division Engineer, to make a riding inspection of this line on January 20 and 21, 1987. He also made an on-the-ground inspection January 29, February 10 and 11, 1987. I have attached a copy of his two reports dated February 13, 1987 as Exhibits 1 and 2. Virtually no slow orders had been removed since our inspection of the Line in July 1986. Furthermore, Mr. Swoope's on-the-ground inspections indicated that the slow orders were appropriate, due to the substantially deteriorated condition of the rail line. Once again, B&M gave no indication that it planned to correct those deficiencies in the foreseeable future.

5. Spring 1987 Slow Orders

B&M placed additional slow orders in late March due to high water threat and unusual amounts of rainfall. I arranged for Amtrak's Assistant Division Engineer, A.J. Cloutier, to make a riding inspection of the track on train number 60 on April 3, 1987 and to subsequently make an on-the-ground inspection along with Amtrak's R.L. Swoope. Their report of April 9 is attached as Exhibit 3. That report concluded that "the safe operation of trains over portions of . . . [the Line] is barely within FRA standards, and could slip out of these tolerances at any given time at any give location."

---

[1] FRA Class I track is the poorest quality track permitted under the FRA Track Safety Standards. Passenger trains are only permitted to operate at a maximum speed of 15 MPH on Class I Track.

6. April 20, 1987 Track Inspection

On April 20, 1987 I made a hy-rail inspection trip of the trackage in question with the following people:

J.L. Larson	Amtrak AVP Contract Administration
A.J. Cloutier	Amtrak Division Engineer
S.F. Nevero	B&M Chief Engineer
J.R. Stoetzel	B&M V.P.O.
C. Behlke	B&M G. Mgr.

During this trip Mr. Nevero repeatedly pointed out defects which dictated the speed restrictions he had placed on the Line. I inquired why he had not allowed a differential speed for passenger trains as allowed by FRA standard. He said "They are running the max speed that they consider as safe speed at this point." He further stated that the deteriorated condition and the resulting gauge problems were the reasons for the restrictions and that the speed differential was not allowed because of fear that the engines would spread the rail. Further, Mr. Nevero said that B&M did not plan to implement any tie or rail replacement program.

7. Subsequent Inspections and Arrangements With The Central Vermont Railway, Inc.

In light of B&M's continuing failure to perform the maintenance necessary to support agreed upon speeds, and as a result of our April 20, 1987 inspections, it was decided that the line was not suitable for passenger operations. Since then, Amtrak has persisted in its attempts to secure B&M's cooperation in restoring the Line to a level of utility which would permit restoration of the northern leg of the Montrealer service. We were aided in those efforts by the Congressional appropriation of $5 million for use in construction, rehabilitation, renewal, replacement or other improvements Amtrak believes are necessary to restore passenger service between Springfield and Montreal

through Vermont. However, and even in view of that additional funding, our efforts with B&M have proven fruitless, and the Line continues to deteriorate.

As a result, Amtrak management began discussions with the Central Vermont Railway, Inc. ("CV"). Those discussions, as I understood them, were aimed at arranging for restoration of the Line to permit Amtrak to reinstitute the complete operation of the Montrealer. As part of our planning to determine the feasibility and cost of resuming operations, I took another inspection trip over the Line segment between Brattleboro and Windsor, Vt. with CV personnel on February 2, 1988.

The following CV personnel were present:

T.J. Faucett	Chief Engineer
K. Bagby	Engineer, Communications and Signals
J. Dulac	Engineer, Track and Structures

Our inspection showed that B&M had not improved the condition of the Line since my inspection in April 1987, and that the condition of the track had continued to deteriorate.

If Amtrak acquires the property, and if CV receives authority to acquire it from Amtrak, CV has agreed to perform the repair and rehabilitation work necessary to restore passenger speeds to at least 55 MPH on the Line between Palmer, Massachusetts and Windsor, Vermont, subject to speed restrictions required by the FRA due to track curvature and to 59 MPH on the segment of the Line between Windsor and White River Junction, subject to the same speed restrictions. In addition, CV has agreed to increase the zone speed on the segment between Brattleboro and Windsor to 59 MPH, subject to the same restrictions, after the installation of additional continuous welded rail on that portion of the Line in segments sufficient to warrant a speed increase.

EXHIBIT 1
1 of 2

NATIONAL RAILROAD PASSENGER CORPORATION
INTEROFFICE MEMO

Date: [January 27, 1987]

Attachment A

TO: FILE

FROM: R.L. SWOOPE

SUBJECT: TRACK INSPECTION B&M RAILROAD, SPRINGFIELD, MASS. TO WHITE RIVER JCT., VT.

A riding inspection was made between Springfield, Mass. and White River Jct., Vt. on January 20, 1987 northbound and January 21, 1987 southbound on Amtrak Trains #60 and #61. Speed restrictions on hand January 20, 1987, 1800 hours, information from temporary speed restrictions summary, Central Division, Guilford Transportation Industries Company, No. AD 511, effective 2100 hours, Monday, January 19, 1987.

The speed restrictions are listed in the following order: location, direction, speed, defect, date of slow order:

WA Interlocking to M.P. 2 - Southward - Psgr. 15 MPH - Frt. 10 MPH, account ties and surfacing condition, 8-86.

WA Interlocking to Holyoke northward, 10 MPH, rail and road crossing conditions, 11-86.

M.P. 7 to M.P. 8, southward 10 MPH, surface and curve conditions 11-86.

M.P. 8 to M.P. 18, southward single, 30 MPH, surface and curve conditions, 11-86.

M.P. 28 to M.P. 28.40, single, 25 MPH, surface and crossing conditions, 11-85.

Deerfield and Deerfield Jct. - single 10 MPH, rail and surface conditions, 1-87.

M.P. 28.40 and Deerfield (M.P. 32.7), single, Psgr. 40 MPH - Frt. 30 MPH, surface conditions. 7-86

Silver Street and East Northfield, single, Psgr. 40 MPH - Frt. 30 MPH, rail conditions, 7-86. M.P. 61 to M.P. 67, single, 30 MPH, tie condition, 4-85.

M.P. 67 and M.P. 68, single, 10 MPH, curve conditions, 4-85.

M.P. 68 to M.P. 73, single, 30 MPH, tie condition, 5-86.

M.P. 73 to M.P. 82.5, single, 10 MPH, tie condition, 12-85.

M.P. 102.80 to M.P. 108.80, single, Psgr. 15, Frt. 10, rail and tie conditions, 5-85.

Further in-the-field inspections will follow.

RLS/mlr
cc: John Moreland
H.F. Longhelt

Amtrak [Logo]

EXHIBIT 2

NATIONAL RAILROAD PASSENGER CORPORATION
INTEROFFICE MEMO

Date: [February 13, 1987]

TO: FILE

FROM: R.L. SWOOPE

SUBJECT: TRACK INSPECTION B&M RAILROAD, SPRINGFIELD, MASS. TO WHITERIVER JCT., VT.

In reference to memo dated January 27, 1987 concerning further inspection of the B&M Railroad between Whiteriver Jct., Vt. and Springfield, Mass. An inspection by walking between the MP location referred to in memo dated January 27, 1987 was made on February 10, 1987 and February 11, 1987.

All of the locations the conditions were about the same, poor surface and alignment, low joints, loose joints, severely chipped joints, rail was worn, shelly corrigated [*sic*]. In one location M.P. 67 to M.P. 68 the wheels of cars were riding on the joint bars. The rail for the most part was 112 RE, 1943. Approx. 8 anchors per rail length.

The gage was closely checked at various points and found to be mostly 57" ±. The ties were covered with snow and conditions of crossties could not be verified, but from the indication of the track surface the ties could very well be in poor condition. I would like to suggest after the snow melts about May 1, 1987 an inspection of the ties be made.

In my opinion from my observations in the field and riding the head end of the train, and past experience with the B&M Railroad on derailments, deferred or very little maintenance that the slow order are [*sic*] justified.

RLS/mec
cc: John Moreland
H.F. Longhelt

[RECEIVED]
[FEB 18 1987]
[Deputy Chief Engineer]

PROFIT WITH SAFETY
Amtrak [Logo]

EXHIBIT 3
1 of 3

NATIONAL RAILROAD PASSENGER CORPORATION
INTEROFFICE MEMO

TO: Mr. H.F. Longhelt

Date: [April 9, 1987]
[Received]
[APR 13 1987]
[Deputy Chief Engineer]

FROM: A.J. Cloutier/R.L. Swoope

SUBJECT: TRACK INSPECTIONS

The following data was obtained from a train ride over the B&M and Central Vermont maintained railroads between Springfield, Ma. and White River Junction, Vt., on Train #60 April 3, 1987. Additionally, between the above-mentioned locations, an on-site inspection of all 10 mph speed restrictions was made subsequent to the train ride.

LOCATION (from Springfield, Ma)	TIME TABLE SPEED (12/25/83 G.O. C-201)	SPEED RESTRICTION (by Bulletin Order 4/3/87)
Dp. 2:37A (reverse out of station) 2:44AM (north of Spring Tower)		
Spring Tower-W.A. (MPO.38)	10 mph	---
W.A. - MP 2.0	Southbound track (251 Territory) against current of traffic 20 mph	15 mph
Hand thrown crossovers at Round Hill (MP 1.06) rough ride at 15 mph.		
MP 2.0 - MP 7.0	Southbound against current 30 mph	10 mph (track conditions)
MP 7.0 - MP 8.0	25 mph	10 mph (track conditions)
Dp. Northampton 4:07A, (52" late)		
MP 8.0 - MP 18.0	30 mph	10 mph (high water)
Cross level should be better between MP 11.0 - MP 13.0 even at 10 mph.		
MP 18.0 - MP 23.5	55 mph	---
MP 23.5 - MP 28.0	40 mph	---
MP 28.0 - MP 28.4	40 mph	25 mph

LOCATION (from Springfield, Ma)	TIME TABLE SPEED (12/25/83 G.O. C-201)	SPEED RESTRICTION (by Bulletin Order 4/3/87)
MP 28.4 - MP 32.7	40 mph	———
MP 32.7 - MP 34.6	30 mph	10 mph (track conditions)
MP 34.6 - MP 37.7	30 mph	———
MP 37.7 - MP 49.7	55 mph	40 mph
MP 49.7 - MP 60.32 (CV MP 110.6-120.70 maintained by CV)	49 mph	———•• •• except at MP 114.2-116.0 30 mph
Dp. Barattleboro [sic] 5:26A (59″ late)		
MP 60.32 - MP 67.0	50 mph	30 mph
MP 67.0 - MP 68.0	50 mph	10 mph (track conditions)
MP 68.0 - MP 73.0	50 mph	30 mph
MP 73.0 - MP 82.5 Three inch profile sag between MP 81-82, ditching for water between MP 73-77.	50 mph	10 mph
MP 82.5 - MP 83-4	50 mph	30 mph
MP 83.4 - MP 84.5	50 mph	10 mph•

•track conditions through tunnel and crossing south of Bellows Falls Station - very poor drainage.

LOCATION (from Springfield, Ma)	TIME TABLE SPEED (12/25/83 G.O. C-201)	SPEED RESTRICTION (by Bulletin Order 4/3/87)
Dp. Bellows Falls 6:54A (1'59" late)		
MP 84.5 - MP 102.8	50 mph	30 mph
MP 102.8 - MP 108.0 Cross level rough at 15 mph, joints between rails.	40 mph	15 mph
MP 108. - MP 123.2 (CV MP 0.70 - MP 14.8 maintained by CV)	50 mph	---* *except at CVMP4.2-4.4: 30 mph MP9-11.0: 45 mph MP11-12.0: 40 mph MP12-14.4: 45 mph MP14.5-14.8: 10 mph
Ar. White River Junction 8:19A (1'54" late)		

WALKING INSPECTION

CURVE LOCATION	GAGE (INCHES)	REMARKS
MP 10.67	57 1/2 57 3/4 57 3/4	100 lb. N.H. (1928) Joint batter, one cracked angle bar achor [*sic*] pattern poor and ineffective.
MP 103.1	57 1/2 57 3/4 Profile sag: 3"	100 lb N.H. (1928), anchors ineffective, rail moving south 4 1/2"

LOCATION (from Springfield, Ma)	TIME TABLE SPEED (12/25/83 G.O. C-201)	SPEED RESTRICTION (by Bulletin Order 4/3/87)
MP 81.5	Profile sag: 3″ (approx. 250 long with 2″ cross level at some joints)	
MP 77.6	57 3/4	100 lb rail, joint batter
MP 76.5	57 1/2	MP 74 - MP 77: ditching by high rail gradeall to alleivate [*sic*] water problem on west side of Row. Note: 30″ cross track corrigated [*sic*] pipe on site to be installed at this location.
MP 75.2	57 1/2	
MP 74.8	Profile sag: 3″	
MP 70.8	57 1/4 to 57 1/2	
MP 67.8	57 1/2	
MP 7.5	58+ (1/4″ space between base of rail and shoulder of plate.)	

The safe operation of trains over portions of the above-mentioned track is barely within FRA standards and could slip outside of these tolerances at any given time at any given location. During the up-coming production season, attention must be paid to these locations or it would be questionable to continue service past the Fall of 1987.

[Signature]
A.J. Cloutier
Assit Division Engineer

AJC/mg

cc: Mr. B.R. Pohlot
Mr. D.J. Beatty

VERIFICATION

City of Washington)
) ss:
District of Columbia)

Herbert F. Longhelt, being duly sworn, deposes and states that he has read the foregoing statement, knows the facts asserted therein, and that the same are true and correct to the best of his knowledge and belief.

Executed at Washington, D.C. this [4] day of [April], 1988.

[Signature]
Herbert F. Longhelt

Subscribed and sworn to before me
this [4th] day of [April], 1988.

[Signature]
Notary Public
My Commission Expires _____

BEFORE THE
INTERSTATE COMMERCE COMMISSION
Washington, D.C.

Finance Docket 31250

THE NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)—CONVEYANCE OF BOSTON AND MAINE CORPORATION INTERESTS IN CONNECTICUT RIVER LINE IN VERMONT AND NEW HAMPSHIRE

Finance Docket 31259

CENTRAL VERMONT RAILWAY, INC.—PETITION FOR EXEMPTION—ACQUISITION AND OPERATION OF CERTAIN INTERESTS IN RAIL LINE FROM THE NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

VERIFIED STATEMENT OF SUSAN C. CRAMPTON

My name is Susan C. Crampton. I am employed by the State of Vermont as Secretary of its Agency of Transportation ("VAOT"), 133 State Street, Montpelier, Vermont 05602. I am submitting this Verified Statement in support of (1) Amtrak's application for an order requiring conveyance by the Boston and Maine Corporation ("B&M") of certain interests in the Connecticut River Line ("the Line") and (2) the petition of Central Vermont Railway, Inc. ("CV") for an exemption from regulation with respect to CV's acquisition of those interests in the Line from Amtrak.

1. Background

I was appointed to my present position as Vermont's Secretary of Transportation by Governor Madeleine M. Kunin in early 1985. I am responsible for management of VAOT, including its highway, airport and railroad programs. I am also responsible for advising the Governor on transportation policy and budget issues and for testifying before committees of the State legislature on transportation issues. I have participated in several task force studies on transportation issues and have discussed transportation issues with numerous civic, industry and consumer groups, as well as private citizens. I have been active in the American Association of State Highway and Transportation Officials ("AASHTO"), the Transportation Research Board ("TRB"), the Transportation Advisory Committee of the New England Governor's Conference, Inc. and in maintaining informal contact on regional transportation issues with my colleagues in the neighboring states of New Hampshire, Massachusetts and New York.

From almost the very beginning of my term in office, I have been very concerned about the course of Guilford Transportation Industries, Inc.("GTI"), particularly the low level of track maintenance on its B&M subsidiary's Connecticut River Line, both as it has affected railroad operations and the safety of persons and property along the Line. On August 27, 1985, after a rash of derailments along the Line, I participated in a joint VAOT/B&M inspection of the Vermont portion of the Line. (GTI/B&M representatives included Chairman and Chief Executive Office David A. Fink and Chief Engineer S.F. Nevero.) Over the years, I have had several meetings with F. Colin Pease, GTI's Vice President for Government Affairs, the most recent of which was in Montpelier on November 10, 1987, several weeks after we received notice from GTI that it had amended its System Diagram Map to include the Line in Category One.

2. State Of Vermont's Commitment To Preservation And Improvement Of Railroad Service

The State of Vermont's modern involvement in the railroad industry goes back to the abandonment of the Rutland Railway in the early 1960's.[1] In what became a prototype for constructive governmental response to abandonment of low-density lines, the State of Vermont purchased viable segments of the Rutland and leased them to newly-organized short line railroads for continued operation.[2] The two resulting short lines—Vermont Railway, Inc. ("VTR") (Bennington to Burlington) and Green Mountain Railroad Corp. ("GMRC") (Bellows Falls to Rutland)—continue in operation today. In 1973, the State acquired the former St. Johnsbury & Lamoille County Railroad (Swanton to St. Johnsbury; presently leased to and operated by the Lamoille Valley Railroad Company). More recently, in 1980, the State acquired the former Montpelier & Barre Railroad Corp. (Montpelier Junction to Graniteville; presently leased to and operated by the Washington County Railroad Corporation). At present, the State owns about 300 of approximately 746 miles of railroad trackage remaining in Vermont.

Over the years, using available federal and state funds, VAOT has also participated in a number of railroad rehabilitation projects. In 1976-77, using funds available through the New England Regional Commission, the State assisted B&M's prior management in improvements along the Line, including enlargement of the Bellows Falls tunnel, track work, rehabilitation of bridge abutments and signal system improvements. For many years, the State's grade crossing improvement program has assigned special

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[1] *See Rutland Ry. Corp.—Abandonment of Entire Line*, 317 I.C.C. 393 (1962).

[2] *State of Vermont and Vermont Ry., Inc.—Acquisition and Operation in Vermont*, 320 I.C.C. 330 (1963), *modified* 320 I.C.C. 609 (1964).

priority to Amtrak routes, including B&M's Connecticut River Line.

The State of Vermont also has taken an active part in regulatory proceedings before this Commission. It was the only public entity to oppose GTI's acquisition of control over B&M.[3] The State also opposed GTI's acquisition of control over the Delaware & Hudson Railway Company ("D&H"), in large part because of concern that GTI's control of both B&M and D&H almost inevitably would lead to downgrading of B&M's Connecticut River Line.[4] In 1986, in large part because of deep concerns about the ability of GTI management to provide adequate service over an expanded system, the State lobbied its Congressional delegation in opposition to the federal government's proposed sale of Conrail to Norfolk Southern. (To mitigate the threat of monopoly resulting from its proposed acquisition of Conrail, Norfolk Southern had proposed to transfer certain tracks and operating rights to GTI.)

Sadly, time and events have confirmed the validity of the State's concerns about GTI. The adverse impact of GTI control on freight and passenger operations over the Line now is apparent. Amtrak's *Montrealer* made its last run on April 5, 1987. The use and enjoyment of trackage rights by CV has been compromised by the Line's physical deterioration. On September 2, 1987, B&M amended its System Diagram Map (49 C.F.R. §§ 1152.10-1152.11) to include the Connecticut River Line in Category One (an-

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[3] *Guilford Transportation Industries, Inc.—Control—Boston and Maine Corp.*, 366 I.C.C. 292, 297 (1982), *aff'd in part and rev'd in part sub nom. Lamoille Valley R.R., Co. v. ICC*, 711 F.2d 295 (D.C. Cir. 1983).

[4] *Guilford Transportation Industries, Inc.—Control—Delaware & Hudson Ry., Co.*, 366 I.C.C. 396, 408 (1982), *aff'd in part and rev'd in part sub nom. Central Vermont Ry., Inc. v. ICC*, 711 F.2d 331 (D.C. Cir. 1983).

ticipated to be the subject of an abandonment or discontinuance petition within the next three years).[5]

3. Amtrak's Resort To Use Of Its Authority Under Section 402(d) Of The Rail Passenger Service Act Was Reasonable

Based on my own observations of GTI's corporate behavior over the past several years, I believe that Amtrak's decision to resort to use of its authority under Section 402(d) of the Rail Passenger Service Act was reasonable.

Within the overall GTI system, the Connecticut River Line has been treated as a secondary route. Routine maintenance has been deferred and there is no evidence that GTI management has any remedial plan. Mr. Pease told me at our November 10, 1987 meeting that if and when improving revenues permit reinstitution of regular maintenance, the needs of GTI's own traffic on the Line would be adequately served by track supporting 25 m.p.h. freight train operation. Should other users of the Line—Amtrak and CV—desire track capable of supporting higher speeds, GTI's position is that the other users should pay fully for the additional rehabilitation and ongoing maintenance.

The Connecticut River Line also has suffered from various crises that have overtaken GTI during the past two years. During the most stressful periods resulting from GTI's labor and equipment safety problems, GTI management always has attached priority to maintaining the flow of east-west traffic between the Conrail connection near Albany, New York and points in southern Maine and in and about Boston. The likelihood of GTI's cooperating to rehabilitate the Line is further diminished by the fact that, in relative terms, the Line's present deterioration has had

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[5] On March 24, 1988, two days *after* Amtrak filed its Notice of Intention to File Section 402(d) Application, B&M filed an amendment to its System Diagram Map. The Connecticut River Line now is conspicuously absent from Category One.

more of an adverse impact on CV, which is a competitor with GTI on some routes.

In view of GTI's history of neglect of the Line, and its lack of incentive to rehabilitate the Line to standards required for viable passenger service, I wholeheartedly agree with this Commission's finding that there is no basis upon which to conclude that Amtrak would *ever* be able to reach agreement with GTI on the terms of a sale of the Line. (April 29, 1988 Decision at p. 7.) Only prompt Commission approval of Amtrak's application and CV's exemption petition offers any realistic prospect of rehabilitation of the Line and restoration of the *Montrealer's* service.

4. CV's Acquisition Of Certain Interests In The Connecticut River Line Is Consistent With The National Transportation Policy, Is Limited In Scope And Should Not Result In Any Abuse Of Market Power

As I understand it, the Commission must exempt CV's acquisition of certain interests in the Connecticut River Line from application of the so-called control provisions of the Interstate Commerce Act, if it finds that: (1) such regulation is not necessary to carry out national transportation policy (as set forth at 49 U.S.C. § 10101a), and (2) either (A) the transaction is of limited scope *or* (B) the application of such provisions is not needed to protect shippers from the abuse of market power. In my view, each of these three tests is met in this case.

First, I believe that the exemption sought by CV for its acquisition of the interests in the Connecticut River Line is fully consistent with the national transportation policy. In particular, it is consistent with the policy "to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required." 49 U.S.C. § 10101a(2). As I noted above, the Connecticut River Line has steadily deteriorated over the past two

years and a prompt resolution of CV's exemption petition—as opposed to prolonged application of the Commission's control provisions—is critical to getting the Line rehabilitated before the end of the year and expeditiously restoring reliable passenger and freight service.

Similarly, the exemption sought by CV is consistent with the national policies "to ensure the development and continuation of a sound rail transportation system . . . to meet the needs of the public" (49 U.S.C. § 10101a[4]) and "to operate transportation facilities and equipment without detriment to the public health and safety" (49 U.S.C. § 10101a[8]). I believe that the deterioration of the Connecticut River Line at this moment threatens the "continuation of a sound transportation system" and is potentially detrimental to the "public health and safety." The proposed exemption is a significant step in halting this process of deterioration and restoring the Line to a healthy status.

The exemption sought by CV is also consistent with the national policy "to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers." 49 U.S.C. § 10101a(5). B&M's failure to maintain a vital segment of the Connecticut River Line has important implications for the well-being of the other railroads operating in Vermont. Those railroads depend directly on connections with the Line for access to shippers and receivers both inside and outside of Vermont. The physical upgrading of the Line will enhance coordination among these railroads and generally enhance the competitiveness of railroads in Vermont. Moreover, the provision of the proposed CV/B&M agreement permitting, for the first time, *both* CV and B&M to interchange traffic with the GMRC at Bellows Falls will plainly increase competition.

Finally, CV's exemption petition is consistent with the national policy "to encourage and promote energy conser-

vation." 49 U.S.C. § 10101a(15). The deterioration of the Connecticut River Line has led to an exodus of shippers from railroads to motor carriers—a trend clearly inconsistent with energy conservation.

Second, the transactions which are the subject of CV's proposed exemption are also limited in scope. The transactions at issue apply to only about 48 miles of track. Today, both B&M and CV operate over that track (at least to the extent track conditions permit). As a result of the proposed transactions, this situation would remain unchanged: B&M and CV would continue to operate over the track.

Third, regulation in this instance is not required to protect shippers from abuse of market power. Indeed, the proposed transactions will benefit competition and shippers. Both B&M and CV will continue to operate over the Line, but the Line in the future should be able to sustain faster and improved service. Shippers on the GMRC will enjoy additional routing options over the CV. The State of Vermont and CV have entered into a Memorandum of Understanding in which CV has committed itself to public interest covenants on these points. (A copy of this memorandum is attached as Exhibit 1.) Thus, the proposed transactions, to the extent they have any competitive effect, should aid, not harm, competition.

In sum, I believe that CV's petition for exemption will enhance the national transportation policy. I urge the Commission to approve that petition promptly.

VERIFICATION

State of Vermont)
) ss:
County of Washington)

Susan C. Crampton, being duly sworn, deposes and states that she has read the foregoing statement, knows the facts asserted therein, and that the same are true and correct to the best of her knowledge and belief.

Executed in the City of Montpelier, County of Washington and State of Vermont, this [11th] day of May, 1988.

[Signature]

Subscribed and sworn to before me
this [11th] day of May, 1988.

[Signature]
Notary Public
My Commission Expires
February 10, 1991

[BOSTON & MAINE CORP.'S ARGUMENT AND EVIDENCE IN OPPOSITION TO NATIONAL RAILROAD PASSENGER CORP.'S SECTION 402(d) APPLICATION AND CENTRAL VERMONT RAILWAY, INC.'S PETITION FOR EXEMPTION, TAB 5, DOCUMENT 2, FILED IN THE ICC ON MAY 31, 1988]

January 6, 1988

To: Ronald E. Lawless
From: Gerald L. Maas
Subject: Authority Needed To Pursue Acquisition Of B&M Segment Of Connecticut River Line

At last October's CV Board meeting, we discussed the operating difficulties experienced by CV in connection with the 49 mile segment of the Connecticut River Line between Windsor and Brattleboro, Vermont owned and dispatched by the Boston and Maine Corporation. I subsequently supplied you with correspondence which we sent to David Fink of Guilford Transportation Industries, Inc., and to Dennis Sullivan of Amtrak for purposes of exploring solutions to these problems.

Service over and the physical condition of the B&M segment of the Connecticut River Line continues to deteriorate, and Guilford cannot be persuaded to voluntarily improve the situation. After exploring a wide range of proposals with Amtrak and the State of Vermont we have decided on a plan to initiate a proceeding in which Amtrak will condemn certain Guilford interests in the line and subsequently assign those interests to CV for purposes of upgrading and operating the line. CV and GTC Board approvals will be required.

Amtrak Conditions for Commencement of Condemnation

Amtrak has the authority under the Rail Passenger Service Act to seek an order from the Interstate Commerce Commission to condemn interests in rail property necessary to permit intercity rail passenger service, and would

like to use that authority to reestablish the Montrealer. But Amtrak does not want to own or operate the Line, and has no funds to acquire it. Therefore, Amtrak will proceed with condemnation only if it is fully indemnified for the amount finally determined to constitute "just compensation" and any other damages Guilford might be awarded.

This creates a problem in that it is impossible to know with certainty prior to a final award what level of compensation will be established. Since CV is not prepared to provide Amtrak with an open-ended guarantee, we have proposed to indemnify it up to the amount of $1.5 million.

In the event the award exceeds that amount and no alternative sources for funding the purchase (such as Congress or the State of Vermont) has been found, CV will direct Amtrak to withdraw the petition without taking title or possession of the property.

If the petition is withdrawn, Guilford might be entitled to recover its legal and consulting fees and other uncompensated damages so Amtrak is also insisting on being indemnified against such liability. While difficult to quantify, CV's exposure here is not great and the amounts involved relatively small.

We have been successful in obtaining legislation enacted by Congress which appropriates $5 million to reinstitute the Amtrak Montrealer service. A portion of this appropriation has been earmarked for upgrading the segment of the Connecticut River Line CV will acquire from Amtrak. CV is negotiating an agreement with Amtrak which will provide for this upgrading work. A second agreement will govern the reinstitution of the Montrealer service over the CV lines between Palmer, Massachusetts and East Alburgh, Vermont upon completion of the upgrading work.

Procedures for acquiring the Line

The first stage in the condemnation process is for Amtrak to submit a formal offer to purchase Guilford's interests in the Line. The amount offered will be $1.0 million which CV has agreed to make available to Amtrak for the purchase, which reflects the value to CV of acquiring the Line by March 1, 1988 so that upgrading can begin as soon as weather permits without the effort, expense and delay of a condemnation proceeding. If the offer is not accepted within a specific period (and we have reason to believe Guilford will not accept it), it will be withdrawn.

The next step is to file a petition for condemnation at the ICC together with evidence of valuation experts, land appraisals and legal briefs. We will probably contend that "just compensation" is something less than the amount we originally offered. Given the divergence of views concerning the value of the property and Guilford's proclivity for controversy, a hard-fought proceeding can be expected. The statute contemplates expeditious handling by the ICC, but the law in this area is not settled and any order will be subject to appeal. Possession of the property can be taken upon issuance of the initial order, but only at the risk of a judicial determination that the compensation set is inadequate and might ultimately be established at a level which exceeds the value to CV.

We believe that by the time of the Commission's initial decision we should be able to evaluate the substance of Guilford's evidence on value and better assess our risk of a high valuation of the property. The Vermont Agency of Transportation strongly supports our efforts to acquire the Line, and has indicated a willingness to propose state legislation which could make funds available in the event the finding on just compensation exceeds what CV is prepared to pay. Provided such assistance can be obtained without unreasonable conditions upon CV operation of the Line, it

could virtually eliminate the risks of taking the property prior to a finding on just compensation.

To proceed with this plan, CV management requests the following authorizations:

(1) to acquire from Amtrak or Guilford title to the 48.8 mile segment of the Connecticut River Line between Windsor and Brattleboro, Vermont (including trackage in New Hampshire between Windsor and Bellows Falls, Vermont and the right to dispatch trains between White River Junction, Vermont and East Northfield, Massachusetts) subject to terms and conditions deemed by management to be necessary to assist Amtrak's acquisition of such interests through a voluntary purchase agreement with Guilford or through the condemnation process;

(2) to make arrangements for the payment up to $1.5 million for acquisition of the interests described above, including the creation of an escrow fund and/or the issuance of a Grand Trunk Corporation guaranty in that amount; and

(3) to agree on behalf of CV and GTC to indemnify Amtrak for any damages awarded Guilford as a consequence of withdrawing the condemnation petition should the finding of just compensation exceed an amount CV is willing to pay for the rights to be acquired.

This information is provided as background for discussions scheduled for January 11 in your office.

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 31250

National Railroad Passenger Corporation—Conveyance of Boston and Maine Corporation Interest in Connecticut River Line In Vermont and New Hampshire

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Finance Docket No. 31259

Central Vermont Railway, Inc.—Petition for Exemption—Acquisition and Operation of Certain Interests in Rail Lines from the National Railroad Passenger Corporation

VERIFIED STATEMENT OF DAVID A. FINK

My name is David A. Fink, and I am President and Chief Executive Officer of Boston and Maine Corporation ("B&M"). I am familiar with the Connecticut River Line, operations on that Line and the Montrealer passenger service which B&M operated for the National Railroad Passenger Corporation ("Amtrak"). I am also familiar with the application filed recently by Amtrak under Section 402(d) of the Rail Passenger Service Act in which Amtrak is seeking to acquire ownership of the Connecticut River Line between Brattleboro, Vermont and Windsor, Vermont and with the petition of Central Vermont Railway, Inc. ("CV") for exemption of the proposed sale of the Connecticut River Line by Amtrak to CV.

Discussions between B&M and Amtrak concerning the condition of the Connecticut River Line have been ongoing for several years. B&M has always advised Amtrak that

B&M requires speeds of not more than 25 miles per hour for its freight operations on the Connecticut River Line. Amtrak, on the other hand, has continued to insist that the Line be upgraded in order to permit passenger trains to operate at speeds up to 60 miles per hour. Amtrak has always been unwilling, however, to pay for the cost to maintain the Line at such speeds. The cost to maintain the Line at the condition which Amtrak desires would be approximately $8,000 per mile per year more than it would cost to maintain the Line for freight operations only.

In 1987, Amtrak initiated arbitration proceedings under the 1977 Agreement between B&M and Amtrak. Amtrak has taken the position in the arbitration that B&M has not maintained the Connecticut River Line as required under the 1977 Agreement. B&M believes that it has complied with the maintenance requirements under the Agreement. In addition, B&M has taken the position that the 1977 Agreement has terminated. No decision has been rendered on these issues, and arguments are scheduled to be heard by the arbitrators in July, 1988.

After Amtrak discontinued operations of the Montrealer in April, 1987, B&M has consistently advised Amtrak that B&M is willing to have operations of the Montrealer resumed if Amtrak would agree to pay for the incremental cost of maintaining the Connecticut River Line to accommodate the unique requirements and high speeds desired by Amtrak. B&M is still willing to enter into a new agreement with Amtrak on such terms. In addition, if Amtrak would agree to such reasonable terms and conditions, B&M is ready, willing and able to use the $5 million appropriated by Congress in 1987 to upgrade the Connecticut River Line.

Amtrak has always refused to acknowledge any obligation to pay for the additional maintenance of the Connecticut River Line which would be required in order to maintain it at speeds of up to 60 miles per hour. In ad-

dition, Amtrak has refused B&M's past invitation to purchase the Connecticut River Line and to grant B&M a permanent freight easement in that event. Until March 18, 1988, Amtrak had always taken the position that it had no interest in purchasing the Connecticut River Line.

In a letter dated March 18, 1988, Amtrak first offered to buy the Connecticut River Line. I never received any calls or any other inquiry from Amtrak after it sent the letter dated March 18. I called Jim Larson of Amtrak on March 25, 1988, and advised him that B&M had no problem with the concept of selling the Connecticut River Line to Amtrak but that Amtrak's plan to turn the Line over to CV, a direct competitor of B&M, caused B&M grave concern. In that conversation, I also indicated to Mr. Larson that B&M would have no such problem in considering a sale of the portion of the Connecticut River Line located in Massachusetts to the Commonwealth of Massachusetts, since such a transaction would not result in the Line being turned over to a competitor of B&M.

Amtrak never responded to this conversation with Mr. Larson. There were never any discussion or negotiations between B&M and Amtrak concerning the March 18 offer to purchase the Connecticut River Line. B&M was and continues to be willing to talk with Amtrak concerning a sale. In any such discussions, B&M would ask to receive a fair price in payment for the Line, but we have not yet completed an appraisal and have, therefore, no definitive idea at this time of the true value of the Line. If B&M were to sell the Connecticut River Line to Amtrak, we would insist upon a freight easement or some similar arrangement to ensure B&M's ability to continue to serve customers on and to operate over the Connecticut River Line. We would also want to retain the right to develop the Line for fiber optic purposes or for other subsurface projects which would not interfere with rail operations. B&M would continue to object to a sale of the Line to CV, as proposed by Amtrak.

I responded to the Amtrak letter dated March 18, 1988, in a letter to Amtrak dated March 29, 1988. My letter was not a rejection of Amtrak's offer to purchase. Rather, the letter reflected Amtrak's lack of interest in retaining ownership of the Line and suggested an alternative consistent with B&M's prior offers and continuing position that the Montrealer could be resumed over a B&M-owned Connecticut River Line if Amtrak would agree to reasonable terms and conditions. B&M has gone one step further to suggest to Amtrak that the Commission or some other neutral party could decide reasonable terms and conditions, including how much Amtrak should pay for maintenance, if the parties were unable to agree. Amtrak never made any attempt to discuss this offer.

I am also President and Chief Executive Offer of Delaware and Hudson Railway Company ("D&H"). D&H has a line between Albany, New York and the U.S.-Canadian border at Rouses Point, New York. This D&H line is currently used by Amtrak for a train which operates between New York City and Montreal. The D&H line is in excellent condition, and passenger trains can operate at speeds up to 70 miles per hour over certain portions of the line. The D&H line connects at Schenectady with the Empire Corridor line, which has been upgraded to accomodate [*sic*] passenger trains at 100 miles per hour over much of its length.

D&H is willing to enter into an agreement with Amtrak permitting the Montrealer to operate over the D&H line as an alternative to the Connecticut River Line. Such an agreement could be reached either pursuant to Section 402(a) of the Rail Passenger Service Act or through negotiation.

B&M views the Connecticut River Line as extending from East Deerfield at the southern end and to Berlin and Groveton, New Hampshire at the northern end. The Connecticut River Line is a relatively light density, mar-

ginal operation, but it is important to B&M. There is still a substantial amount of traffic to and from Berlin and Groveton, and B&M and Canadian Pacific have a significant amount of traffic which moves over this Line. Even though the Line was temporarily listed in category 1 in our system diagram map, B&M wants to continue to operate on the Connecticut River Line.

If CV is permitted to acquire ownership of the Connecticut River Line between Brattleboro and Windsor and to have access to customers, as proposed by CV, it will be increasingly difficult for B&M to continue to operate over the Connecticut River Line. Under the CV proposal, B&M will gradually lose much of its local traffic. If that occurs, operations on the Line as a whole will become even less viable. In those circumstances, B&M will have to consider a down grading of the Line or cutting back on service or even abandonment.

VERIFICATION

COMMONWEALTH OF MASSACHUSETTS :
: ss:
COUNTY OF MIDDLESEX :

David A. Fink, being duly sworn according to law, deposes and says that he has read the foregoing Verified Statement, that he is familiar with the contents thereof and that the statements therein are true and correct to the best of his knowledge, information and belief.

[Signature]
David A. Fink

Sworn to and subscribed
before me this [27] day
of May, 1988

[Signature]
Notary Public

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 31250

National Railroad Passenger Corporation—Conveyance of Boston and Maine Corporation Interest in Connecticut River Line in Vermont and New Hampshire

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Finance Docket No. 31259

Central Vermont Railway, Inc.—Petition for Exemption—Acquisition and Operation of Certain Interests in Rail Lines from the National Railroad Passenger Corporation

VERIFIED STATEMENT OF F. COLIN PEASE

My name is F. Colin Pease, and I am employed by Boston and Maine Corporation ("B&M") as Vice President—Governmental Affairs. I have held this position since June 30, 1983. Part of my duties and responsibilities includes the relationship between B&M and the National Railroad Passenger Corporation ("Amtrak").

I am familiar with the arrangements pursuant to which Amtrak formerly operated its train called the "Montrealer" between Washington and Montreal. A portion of the Montrealer's route involved the line between Springfield, Massachusetts and White River Junction, Vermont. This line, known as the Connecticut River Line, is owned primarily by B&M, but two segments of the line are owned by Central Vermont Railway, Inc. ("CV").

I am familiar with the application filed by Amtrak with the Commission seeking to acquire ownership of B&M's

interests in the Connecticut River Line and with the petition for exemption filed by CV, the primary competitor of B&M in this area, in which CV seeks authority for an immediate transfer of the Line from Amtrak to CV.

I have been personally involved in discussions with Amtrak, CV, the State of Vermont and others concerning the Montrealer and the condition of the Connecticut River Line. Discussions concerning the maintenance on the Connecticut River Line go back at least two years. In these discussions, Amtrak noted that the track condition was not ideal for meeting the unique requirements of Amtrak and operating passenger trains at speeds which Amtrak would have preferred. On the other hand, Amtrak recognized that the track condition was perfectly adequate for B&M's freight service. More importantly, Amtrak always acknowledged that B&M lacked the funds to bring the line up to the speeds desired by Amtrak. In the course of these discussions, which were generally amicable, we attempted to find a method by which Amtrak's desire to operate at faster speeds could be accommodated.

From the fall of 1986 through the spring of 1987, I was involved in on-going discussions with Amtrak and with Massachusetts Congressman Silvio Conte and his staff and with the staff of Senator Leahy of Vermont. The discussions focused upon Amtrak's desire to upgrade the Connecticut River Line and the desirability of the appropriation of federal funds to permit that to occur. At all times during this period, Amtrak and B&M worked jointly and cooperatively towards this goal. In addition, the State of Vermont was informed of these discussions.

During these discussions, Amtrak continued to express its desire to increase the speeds on the Connecticut River Line, but it never threatened to stop running the Montrealer. In fact, on February 24, 1987, I met with Tom Gillespie of Amtrak to discuss the need to work jointly to seek ways to fund a rehabilitation project on the Con-

necticut River Line. Mr. Gillespie never suggested that Amtrak would be taking a precipitous action and agreed to work jointly to seek funding and to work together on other areas of mutual interest. Due to B&M's lack of sufficient funds, both parties believed that a federal appropriation in the amount of approximately $5 million would be the only solution.

In April, 1987, flooding of the Connecticut River caused B&M to suspend all service on the Connecticut River Line for several days. When the flood waters subsided, B&M resumed its freight operations over the Connecticut River Line and authorized the resumption of passenger service. Amtrak, however, abruptly decided that it would not operate the Montrealer. This decision was a complete surprise to B&M and has never been adequately explained by Amtrak.

Amtrak has contended that it stopped running the Montrealer due to the allegedly poor condition of the Connecticut River Line. The condition of the Connecticut River Line was, however, the same after the flooding in April, 1987, as it was before the flooding. Consequently, there was no reason why Amtrak could not have resumed the Montrealer's operations after the flood or at the present time and continued to work cooperatively on a long term solution to the service.

Beginning as early as May, 1987, I participated in numerous meetings and discussions with various state, federal and Amtrak officials in an attempt to resolve issues relating to Amtrak's decision to discontinue operations of the Montrealer over the Connecticut River Line. Those discussions addressed the prospect of having some public entity acquire all or a portion of the Line in order to facilitate the investment of public funds into the track and facilities for the purpose of operating high speed rail passenger service. Specific discussions were held with Amtrak, the Secretary of Transportation for the State of

Vermont and the counsel to the Secretary, various officials from the Commonwealth of Massachusetts, staff of Congressman Conte and Senator Leahy and attorneys representing the CV. Prior to May, 1987, I also met with Phil Larson, General Manager of CV, to discuss his interests in the portion of the Connecticut River Line between Windsor, Vermont and Brattleboro, Vermont.

In July, 1987, Congress appropriated $5 million which could be used for upgrading the Connecticut River Line. The statute contemplated that the funds would be used in accordance with an agreement between the parties. I had several meetings with Jim Larson of Amtrak to discuss an agreement for the use of those funds.

While numerous conversations took place by telephone, I did participate in a meeting with officials from Amtrak, including Jim Larson, on or about July 20, 1987, at our offices in North Billerica, Massachusetts. At that meeting, in which several key officials from the GTI rail system were present, we discussed a number of options which would result in the reactivation of Montrealer service. Included in those discussions were proposals by Amtrak that the train be rerouted via Springfield, Massachusetts over Conrail to a point in Palmer, Massachusetts where Conrail connected with CV and then north via CV to East Northfield, where CV's line joins the Connecticut River Line, and then to White River Junction over the Connecticut River Line. Amtrak also indicated that it was considering another option of operating via the Connecticut River Line to the B&M main line in East Deerfield, where it would operate east to a point where B&M intersects CV and then north via CV to East Northfield and over the Connecticut River Line to White River Junction. In both cases, Amtrak acknowledged that in order to perform these alternate moves efficiently certain capital investments, utilizing non-Amtrak funds, would have to be made to construct efficient connections.

As part of these discussions, the parties considered the feasibility of selling all or portions of the Connecticut River Line to Amtrak or another public body in order to permit the investment of public funds into the tracks and facilities for upgrading and maintenance of the line to a speed of 55 miles per hour—a speed considerably in excess of the speeds necessary for an efficient rail freight operation. One option which was explored was the possible acquisition by Amtrak of the Line between Springfield and Windsor in order to assure the availability of the Line for future passenger service. During that meeting and at future meetings and discussions, Amtrak indicated that it could not justify such an investment for an operation which would not exceed one passenger train per day in each direction. Throughout these discussions, it was at all times made clear by Amtrak that it had absolutely no interest in acquiring the property.

Subsequent to the meeting in North Billerica, I discussed the situation with staff from Congressman Conte's office and from Senator Leahy's office, both by telephone and in several meetings in Washington. During those discussions, I indicated that one option available to them was to encourage Amtrak to acquire the Connecticut River Line for the purpose of preserving the Montrealer service. The result of all these discussions was that Amtrak either had no interest in acquiring the Line or could not justify the acquisition of a lightly used line for the purpose of operating only one passenger train per day in each direction. All of the Government officials favored some method of preserving the Line in a manner which would assure that Amtrak had a continuing interest in operating the Montrealer but recognized that it would not be possible to force Amtrak to acquire the Line.

Officials of Amtrak and I had at least one additional meeting held in the office of Senator Leahy. At that time, we discussed a number of options which, if implemented, would have resulted in the resumption of Montrealer ser-

vice. I suggested to Amtrak that there was a certain maintenance cost associated with operating a light density freight operation efficiently at or below 25 miles per hour and a significantly higher cost to maintain the Connecticut River Line for safe operation of passenger trains at 55 miles per hour. Amtrak continued to insist that B&M maintain the track for operation at the 55 miles per hour desired by Amtrak. I indicated that B&M was prepared to enter into an agreement which would provide for B&M to pay the costs associated with the operation of the freight service and for some other entity, such as Amtrak or a public agency, paying the additional cost associated with the operation of a 55 miles per hour passenger service.

Amtrak refused and indicated that it would be willing to pay an amount which approximated $1.65 to $1.75 per train mile. Through Congressional staff people, Amtrak later indicted [*sic*] that it might be willing to consider a payment of $2.00 per train mile, a figure which B&M believed to be totally inadequate. The offers appeared to be arbitrary, because Amtrak indicated no willingness to make a legitimate effort to determine the actual costs associated with each type of maintenance. Informally, Amtrak officials did concede that after an expenditure of approximately $5 million to rehabilitate the Connecticut River Line between Springfield and Windsor the maintenance costs associated with operation of the freight service would approximate $8,000 to $9,000 per mile per year and the costs to maintain the line for 55 miles per hour passenger service would be approximately $15,000 to $18,000 per mile per year. They indicated that such an expenditure could not be justified for the two passenger trains per day. Amtrak stated that it understood the concept being advanced by B&M but that agreeing to pay the incremental costs would be a "bad precedent." They also recognized that the $5 million which had been appropriated was not sufficient to attain the desired speeds or to fund essential rail replacement work. It was apparent, at least

through September, 1987, that Amtrak had no interest in negotiating an agreement based on a fair allocation of costs and that it had no interest in seeking a procedure, were the parties unable to agree, which would result in a fair allocation of costs.

B&M has always stated that the Montrealer can operate if Amtrak will simply pay the way. It could resume Montrealer service today, but Amtrak refuses. Under these conditions, B&M has been able to agree with Amtrak to use the $5 million to upgrade the Connecticut River Line. B&M simply could not agree to commit the enormous continuing maintenance expenditures which Amtrak insisted upon as a price for the initial upgrading of the Line.

B&M has been and continues to be willing to resume the operation of the Montrealer and to use the $5 million provided that Amtrak compensates B&M for the increased maintenance costs. B&M has suggested, both in the letter of March 29, 1988, from David A. Fink of B&M to Amtrak and in the "Verified Petition of Boston and Maine Corporation to Convert Application Under Section 402(d) of Rail Passenger Service Act to Application Under Section 402(a)," dated April 22, 1988, that it is willing to have the Commission determine reasonable terms and conditions, including the amount which Amtrak should pay for maintenance. Amtrak has refused to participate in any such discussions or to permit the Commission or some other neutral party to decide these issues.

The Connecticut River Line is an important part of the GTI system, which is comprised of the lines of B&M, Maine Central Rail Company ("MEC") and Delaware and Hudson Railway Company ("D&H"). B&M has no desire to abandon the Connecticut River Line. On the contrary, service on the Connecticut River Line has recently been increased to five days a week.

B&M has important customers at Berlin and Groveton, New Hampshire, the northern terminus of the Connecticut

River Line, which can be served only by means that [*sic*] Line. In addition, interchange traffic with CV and with Canadian Pacific ("CP") moves over the Connecticut River Line. After an experiment in handling CP traffic over an alternate route of D&H, CP is again interchanging traffic with B&M at Wells River, Vermont.

The Connecticut River Line has the prospect of increased viability and profitability for B&M as a result of the Springfield Terminal Railway Company ("ST"). ST is a wholly-owned subsidiary of GTI and is the lessee and operator of most of the lines of B&M. ST has more flexible work rules and the capability of providing more efficient service than B&M. ST is presently serving the B&M customers at Groveton and Berlin, and ST operates the Connecticut River Line between Springfield and East Deerfield, Massachusetts. It is anticipated that ST will take over operations and maintenance of the balance of the Connecticut River Line as soon as arbitrators decide upon the appropriate labor protective conditions and certain legal proceedings and arbitration instituted by CV are resolved.

The State of Vermont has expressed its interest in purchasing the Connecticut River Line. B&M indicated its willingness to consider a sale of the Line at its fair market value so long as B&M could retain a comprehensive freight easement and the rights for fiber optic and other uses which do not interfere with rail operations.

During the discussions with Amtrak and other public officials regarding the Montrealer in August, 1987, I received a telephone inquiry from Robert vom Eigen, who represented himself to be an attorney for CV. Mr. vom Eigen indicated that CV had an interest in acquiring the Connecticut River Line between Brattleboro and Windsor, Vermont. I replied that within the past year I had dinner with Phillip Larson of CV to discuss the same issue and that it was very apparent from our prior discussions that CV did not have sufficient funds to pay for the Line if

an agreement were reached. I further indicated that, if a decision were to be made to sell the Line to CV, such a sale would be based on the fair market value of the Line for its highest and best use, which would be determined by an appraiser. Mr. vom Eigen indicated that CV would only pay an amount based on the going concern value of the Line. In light of our differing views on the value of the Line, further discussion appeared to be useless.

While it was not apparent at the time, it has now become clear that neither Amtrak nor CV had any interest in negotiating in good faith over the future of the Montrealer, because they had already entered into negotiations regarding the initiation of condemnation procedures.

It is further apparent that Amtrak at no time had any interest in either acquiring the Connecticut River Line or funding the true costs associated with the operation of the passenger service over the Line. Instead, Amtrak chose to permit Canadian National Railway ("CN"), through CV, to utilize the condemnation powers vested in Amtrak to further pursue CN's goals of raiding the traffic base of the GTI system. CN had already asked the Commission for direct access over MEC owned track to reach many of the GTI system's major customers. If CN were successful in gaining direct access to GTI's major customers, that would virtually destroy the GTI system.

In this most recent action, CN is attempting to use Amtrak's eminent domain power to further permit CN to access existing GTI customers, to foreclose the GTI system from attracting new customers to its Connecticut River Line between Windsor and Brattleboro and to permit CN an interchange where none has existed by agreement between CV and B&M for over thirty years. Amtrak is providing an avenue to CN to abrogate the existing trackage rights agreement between CV and B&M. Such abrogation, if approved by the Commission, would result in the loss

of traffic to the GTI system and would weaken its operations in Vermont and New Hampshire.

I am familiar with Amtrak's offer to purchase the Connecticut River Line, as stated in the letter dated March 18, 1988. Following receipt of the letter, neither I nor anyone else at B&M to my knowledge received any calls or any other type of follow up inquiry from Amtrak concerning the offer. We analyzed the offer and concluded that the price was too low. In addition, the proposal was unacceptable from B&M's perspective to the extent that it contemplated transfer of the Line to CV. B&M and CV are direct competitors on the Connecticut River Line, and, as described above, the competitive balance would be completely disrupted by such a transaction.

B&M communicated these thoughts to Amtrak when Dave Fink called Jim Larson on March 25, 1988. Mr. Fink stated that a sale to Amtrak would be very difficult, even assuming a price could be agreed upon, if Amtrak intended to convey the Line to CV. On the other hand, Mr. Fink indicated that B&M was more favorably inclined to sell the southern end of the Connecticut River Line to Massachusetts, because there was no further transfer to any freight railroad involved.

We heard nothing further from Amtrak. On March 29, 1988, Mr. Fink sent a letter to Amtrak explaining that a sale of the Line was unnecessary. The letter did not, and was not intended to, reject the Amtrak offer. It clearly was intended to provide a fair mechanism for negotiations and, if necessary, a determination by the Commission to resolve differences between B&M and Amtrak. The letter was sent in the hope that the parties could immediately begin rehabilitation of the Line and initiate Montrealer service.

There were never any discussions, much less negotiations, between Amtrak and B&M concerning the Amtrak offer to buy the Line. B&M was always ready, willing and

able to discuss a sale, but Amtrak made no effort to do so. In view of the fact that the Amtrak deal with CV had been made several months before the offer of March 18, 1988, Amtrak's reluctance to negotiate was understandable. It is clear that Amtrak did not want to pursue negotiations, but rather wanted to file the Application instead.

B&M is still willing to discuss a sale to Amtrak. If the price offered were fair and B&M's freight operations were properly protected, it would be possible to reach an agreement.

VERIFICATION

COMMONWEALTH OF MASSACHUSETTS :
: ss:
COUNTY OF MIDDLESEX :

F. Colin Pease, being duly sworn according to law, deposes and says that he has read the foregoing Verified Statement, that he is familiar with the contents thereof and that the statements therein are true and correct to the best of his knowledge, information and belief.

[Signature]
F. Colin Pease

Sworn to and subscribed
before me this [27] day
of May, 1988

[Signature]
Notary Public

Before the
INTERSTATE COMMERCE COMMISSION
Washington, D.C.

Finance Docket Nos. 31250 and 31259

THE NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)—APPLICATION UNDER SECTION 402(d) OF THE RAIL PASSENGER SERVICE ACT—FOR ORDER REQUIRING CONVEYANCE OF BOSTON AND MAINE CORPORATION INTERESTS IN CONNECTICUT RIVER LINE IN VERMONT AND NEW HAMPSHIRE

VERIFIED REBUTTAL STATEMENT OF GERALD L. MAAS

My name is Gerald L. Maas. I am President of Grand Trunk Corporation ("GTC") and its railroad subsidiaries, including Central Vermont Railway, Inc. ("CV"). My business address is 1333 Brewery Park Boulevard, Detroit, Michigan 48207-2699.

I began my railroad career with the New York Central in 1955. My first job with the Grand Trunk organization was General Manager of the CV in 1976. In 1977, I became General Manager of the Grand Trunk Western, and subsequently held positions as Assistant Vice President of Operations, Vice President of Transportation and Maintenance, Vice President of Operations and Executive Vice President. I was educated at Eastern Illinois University and Harvard Business School.

PURPOSE OF STATEMENT

Witnesses offering testimony on behalf of the Boston and Maine Corporation have made flamboyant allegations about the role played by CV in the plan to restore the

Montrealer service, and have asserted that CV has manipulated Amtrak to use its condemnation powers to further some sinister "goals" of CV's affiliate, the Canadian National Railway ("CN"), to "raid" the traffic base of Guilford Transportation Industries affiliated railroads. They further complain that CV's acquisition of the Connecticut River Line will destroy the "healthy balance" between CV and B&M "which protects the interests of both carriers."

Amtrak will speak for itself. In this statement, I would like to explain CV's interest in the Connecticut River Line, its reasons for agreeing to participate in the transactions the Commission is being asked to approve or exempt, and the involvement of CN—actually, the lack of involvement of CN—in the planning, shaping or promotion of the agreements with Amtrak. I will also address questions raised about the impacts of this transaction upon competition in the geographic market served by CV and B&M and about CV's ability to assume the financial obligations for maintenance of the Conn River Line.

Before turning to these issues, however, I would like to comment upon the tone and perspective offered by B&M's evidence and argument. To read the B&M submission a person with no knowledge of the events which led up to these proceedings would assume that B&M had been providing an acceptable level of service, maintaining the Connecticut River Line and discharging its obligations to its shippers and connecting carriers, just like any responsible railroad. Further, one would gain the impression that Amtrak had sought to impose certain "unique" maintenance requirements on this good citizen without paying for them, and had now—without providing B&M the opportunity to negotiate a resolution of the dispute—instituted a condemnation of this key, strategic portion of its property at the instigation of its competitor which desired to put it out of business.

The facts, of course, are quite different. As previously detailed by Amtrak and CV witnesses, years of deferred maintenance have caused in [*sic*] 33 of the 49 miles of the Brattleboro to Windsor segment to become subject to 10 mph speed restrictions. Numerous efforts to reach negotiated solutions to these maintenance inadequacies have been terminated or ignored by Guilford. Service disruptions caused by the condition of the Line and disputes with B&M's employees have forced shippers to move or use alternate modes of transportation. Amtrak was forced to discontinue the Montrealer service. Guilford diverted overhead traffic off the Line to its parallel D&H route, placed the Conn River Line on its system diagram map as a top candidate for abandonment and suggested to CV representatives and others that condominium development was a more appropriate use for the property than rail use.

We now learn from B&M that this was all a mistake. The "experiment" of utilizing the D&H route for CP overhead traffic—a route which B&M now asserts is superior for passenger service—somehow, without explanation, has failed. The CP interchange traffic has been moved back to the Conn River Line in the days that followed the filing of Amtrak's application. The Conn River Line, without explanation as to why it was placed on the map, is removed from the system diagram map days after notice of this proceeding was filed. The property is now not only suitable for rail use, but an important link in the B&M system.

But one can ignore all of that. This case has nothing to do with Guilford's shortcomings. As Witness Fay puts it: "In its simplest terms, this case is essentially an opportunistic attempt by CN and its subsidiary, CV, to obtain additional marketing advantages in territory now served by the GTI system." (V.S. pg. 4). Guilford's version of what is happening could almost be amusing, in a macabre sense, if not for the fact that B&M's actions have seriously

threatened the very survival of CV and rail transportation service in the region.

CV'S ROLE IN ASSISTING RESTORATION OF MONTREALER

CV's objectives in these proceedings are to restore an acceptable level of maintenance to permit efficient operations across the Conn River Line for its freight business and to permit resumption of Montrealer service. CV has no designs on B&M's traffic for which we presently do not compete. We would have preferred that B&M had honored its commitment to Amtrak and had maintained the Line, with CV contributing its share of the expenses.

CV did not leap to the conclusion that it would acquire the Line in conjunction with Amtrak. However, we came to the realization late last summer that if there were to be any hope of getting the rehabilitation work on the Line completed during 1988, working with Amtrak under §402(d) of the Rail Passenger Service Act (RPSA) was the only way. We came to this realization after our own inquiries with Guilford management indicated that a negotiated resolution was not possible, and after supporting legislation which appropriated $5 million to upgrade B&M trackage between Springfield and White River Junction failed to result in an agreement between Amtrak and B&M.

Amtrak and CV have parallel, but not identical, interests in achieving the resumption of Montrealer service. CV views Amtrak as a customer for whom CV provides facilities and services for consideration which covers our costs and provides an opportunity to earn on-time incentive payments which go to our bottom line. When the Montrealer service was discontinued, we sought to promote its restoration on terms acceptable to Amtrak and, at least initially, to B&M. CV's primary business is hauling freight, and we were very mindful of the positive consequences

for our freight operations of the resumption of the Montrealer and the upgrading work which will precede it.

After efforts by Amtrak and B&M to negotiate a solution to their impasse over upgrading the Line and operation of the train failed by the end of the summer of 1987, CV's representatives responded favorably to the suggestion from Amtrak representatives that CV reimburse Amtrak for the costs of acquiring B&M's interests in the Conn River Line once Amtrak acquired those interests utilizing its authority under §402(d) of RPSA. Amtrak specified that it would proceed only if CV and GTC assumed the ownership obligations for the Line and agreed to fully reimburse Amtrak for the purchase price. Once CV acquired the property, Amtrak would devote a portion of the funds appropriated by Congress for restoration of Montrealer service to the upgrade of the Windsor to Brattleboro segment, provided CV would agree to a long-term operating contract.

Although I was not a direct participant, I did receive regular reports which confirmed that the negotiations during the fall and winter over the terms of the various contracts were protracted, at times contentious and definitely arms length. One area of debate which was brought to my attention was Amtrak's insistence that, under the contract governing operation of the Montrealer, CV not receive the full range of payments for the maintenance and other expenses incurred by virtue of the operation of the train south of White River Junction.

Unlike B&M, CV does not regard Amtrak's maintenance requirements to be "unique" or unjustified for freight operations. We maintain our entire main line at FRA Class III, even in areas where Amtrak has never operated, but we have looked to Amtrak to compensate CV for the additional wear and tear and other costs caused by its operations. Amtrak recognized that had B&M decided to maintain the line at acceptable standards under the exist-

ing trackage rights agreement, CV would have incurred a proportionate share of the maintenance and capital costs. In Amtrak's view, it was conferring a benefit upon CV by upgrading the line with Federal funds which would assist CV's freight operations, and that it should receive concessions in terms of operating expenses for the train.

A compromise was reached whereby CV would commit to maintain its trackage south of White River Junction to Amtrak's standards for twenty years, waiving for the first ten years of the operating contract reimbursement for wear and tear on the rail line south of White River Junction. However, CV would retain payments for other costs incurred at modified levels. This is simply one example of the give and take which occurred over the period of the negotiations on a number of provisions in the various agreements. The assertion that Amtrak is acting as CV's stalking horse in these proceedings cannot be supported by a review of these contracts which reflect a balancing of the interests of both parties.

As I mentioned previously, CV shares Amtrak's desire to restore Montrealer service because it has been profitable to CV. It is no secret that CV's (and B&M's) freight operation will also benefit from this transaction. Our costs will be reduced and our opportunities for business development will be revived with the elimination of the cancer of deferred maintenance on this trackage that is essential for moving across the CV system. CV's General Manager, Phillip C. Larson, will provide greater elaboration on these savings. However, these benefits cannot disqualify this transaction or preclude Amtrak from exercising its authority under the RPSA. Amtrak has achieved its public purposes in negotiating a series of arrangements for restoring rail passenger service in this region on a long-term and economical basis.

COMPETITION WILL BE ENHANCED BY CV ACQUISITION OF LINE

B&M, though its attorneys and witness Fay, claims that Amtrak's plan to convey to CV the property acquired from B&M is anticompetitive for two reasons. First, CV's acquisition is said to destroy the long standing relationships governing the alternating segments of the Connecticut River Line, relationships which B&M characterizes as a "healthy balance." Second, B&M claims that the trackage rights agreement proposed by Amtrak and CV provides opportunities for CV to raid traffic presently handled by B&M or opportunities which B&M presently enjoys for development of new traffic on the line which threatens B&M's ability to survive as a competitor in the region.

In response to the second assertion, acquisition of B&M's traffic at local stations is not and has never been an objective in connection with the arrangements it has negotiated with Amtrak. If B&M goes out of business in this region, it will be its own doing—not CV's. Provisions in trackage rights agreement for providing joint competitive access to the Green Mountain Railroad interchange at Bellows Falls and the standby right to serve B&M's local customers in the event B&M's service deteriorates to unacceptable levels were inserted in response to concerns by the State of Vermont in exchange for the support and cooperation reflected in our Memorandum of Understanding with the State. Nevertheless, Mr. Phillip Larson will discuss further modifications to the trackage rights agreement to which CV would agree in order to address certain of the unintended consequences described by Mr. Fay. The balance of my comments on the competitive issues will be directed at B&M's first argument, and CP's expressions of concern over its rights to "competitive access" via the Conn River Line, which serves as one of the routes over which its shippers can route traffic to and from the U.S.

CV and B&M have since the turn of the century operated on alternating segments of each other's trackage in the Connecticut River Valley. Mr. Fay is quite correct in noting that, although the two carriers competed for overhead traffic to and from Canada, the relationship was as much cooperative as it was competitive. But regardless of whether the carriers competed or cooperated, the most prominent element of the relationship was interdependence. Both carriers depended upon the Connecticut River Line for transporting their traffic and had incentives to maintain their respective segments. If a slow order were placed on the Line, both our trains would be stalled.

When Guilford filed its application to acquire the B&M in 1981, CV and B&M operated coordinated freight and piggyback trains which were designed to meet Conrail, D&H and highway competition. That cooperation has ceased as we said it would when CV originally opposed the Guilford consolidations. However, the interdependence remains. The deterioration in the Windsor to Brattleboro segment documented by Amtrak's witnesses has impacted the service rendered by both companies. B&M appears to be indifferent about the problem, perhaps because their dependence is mitigated for a portion of the traffic by the availability of the alternative D&H route. Given B&M's performance since it was acquired by Guilford the historic relationship can no longer be regarded as a "healthy balance."

With the acquisition by CV of the Conn River Line interests from Amtrak, CV's dependence upon B&M will cease. B&M's management practices will no longer be able to prevent CV from becoming an effective competitor. Nevertheless, the "competitive issues" raised by B&M and CP are trivial and without substance. They can be fully addressed in the present context, without the need for a full blown consolidation proceeding.

The Commission reviewed competition in the geographic market served by CV in the context of Guilford's acquisition of the D&H. The Commission found that even though Guilford would control three of the four rail routes between eastern Canadian points and New England, the middle Atlantic states, and the South, competition would not be impaired primarily because of the strong competition from motor carriers. CV's acquisition of the Conn River Line will eliminate B&M's control over the CV route, but it will not reduce competition in this market. Indeed, the plan will permit CV to compete for traffic which we have no hope of attracting to our route given B&M's maintenance and dispatching practices.

B&M and CP, however, do not become dependent upon CV as a result of this transaction. The D&H route south of Rouses Point, New York, provides an alternative for most of the Canadian traffic, notwithstanding Mr. Fink's failed "experiment" with such routing. CP, of course, retains its option for routings via Conrail over its Massena line. Motor carriers will continue to provide stiff competition for all of this business.

B&M traffic to and from paper mills in New Hampshire can only travel over the Conn River Line. However, unlike Guilford for most of CV's overhead business, CV has no opportunity to divert this traffic to its system and has no financial incentive to interfere with B&M's operations across the Conn River Line. Indeed, our financial incentives are to attract as much B&M and CP traffic to this route in order to share maintenance expenses on the segments which CV presently owns. Although, under the proposed trackage rights agreement, B&M's maintenance payments to CV will be capped after three years on the segment between Brattleboro and Windsor, our agreements for the White River Junction to Windsor and Brattleboro to East Northfield segments contain no such cap.

Maintenance on the Conn River Line will improve B&M service and permit it to retain traffic which it otherwise is almost certain to lose to motor carriers under its present policies. Its competitive capabilities should also improve.

CV has committed in the trackage rights agreement with B&M to dispatch the Conn River Line without prejudice to any freight carrier. That obligation is solemnly made on the record of this case. If I or my successors deviate from that policy, B&M or its successor can come to this Commission and seek appropriate redress.

CV's acquisition of the Conn River Line is so clearly pro-competitive that we consciously have proceeded with our petition for exemption with the understanding that there will be no immunity from the antitrust laws conferred by the Commission's action. The Commission should grant our petition because the public interest requires it and because no useful purpose would be served by a more extended regulatory proceeding.

CV'S AFFILIATION WITH CANADIAN NATIONAL

It is no secret to this Commission that CV is affiliated with CN, and that CN is a crown corporation of Canada. B&M would have this Commission believe that these facts have relevance to the issues which the Commission must decide. I respectfully suggest that they do not.

The stock of CV is owned by GTC, which is headquartered in Detroit. GTC and its subsidiaries are run entirely by U.S. management, without interference by GTC's parent - CN. Grand Trunk coordinates its operations and marketing with CN, but Grand Trunk has similar coordinations with unaffiliated carriers as well—most notably the Burlington Northern. CN management believes that the best way for its U.S. subsidiaries to survive in the transportation marketplace of the U.S. is to permit their U.S. managers to operate independently and in the interests of the companies they run.

CV's decision to proceed with Amtrak was made entirely by GTC and CV management with no involvement, direction or correspondence with CN management. CV and GTC needed authority from their boards to enter into the Acquisition Agreement with Amtrak. Mr. Ronald E. Lawless, Chief Executive Officer of CN, sits on the executive committees of GTC's and CV's board. My January 6, 1988 memorandum to Mr. Lawless, as well as copies of Mr. Walker's October 22, 1987 letters to Mr. Sullivan of Amtrak and Mr. Fink of Guilford,[1] were to him in his capacity as Chairman of CV's board. After a brief meeting where the negotiations with Amtrak were explained to him, the executive committees authorized GTC and CV to proceed.

As far as I and my top management know, no other communications with any officer or employee of CN have occurred involving the plan to acquire the Conn River Line. Certainly, we have received no instructions or direction from CN management concerning the Conn River Line, except that I know Mr. Lawless has approved our plan after we exhausted all measures short of acquisition to resolve CV's problems of maintenance and dispatching on the Line. The transactions negotiated with Amtrak are designed to achieve CV corporate objectives and CN simply has had no involvement whatsoever.

CV'S ABILITY TO FULFILL COMMITMENTS UNDER AMTRAK CONTRACTS

B&M suggests that because of the additional capital and maintenance burdens assumed by CV, and given our marginal financial performance in recent years, CV will not be able to absorb the costs incurred as a result of its obligations to Amtrak. Mr. Phillip Larson will provide spe-

[1] B&M attached the first two documents to its submission, but failed to supply Mr. Walker's letter to Mr. Fink. I am correcting that omission by attaching it to this statement. CV has never received a response to this invitation for discussion.

cific estimates of the costs of capital and maintenance programs which CV anticipates and an explanation of the sources of funds which will be available to cover those expenses. I am satisfied that CV's financial condition will not worsen as a result of the acquisition of the Conn River Line interests, and that CV will be able to honor its commitments to Amtrak given what I know about the future.

I would like to reflect on two general issues of corporate philosophy which have made our decision to invest in the Conn River Line interests, with the long-term maintenance commitments to Amtrak, easier to make. CV views the Conn River Line segment as an integral and essential portion of its operation. In its present state of repairs, the company cannot survive for long. If we want to remain in business, we have no choice but to make the investment. Of course, that does not mean we can or will pay any price to achieve that result.

We also do not believe we can compete with our rail and motor carrier competitors in this region for the traffic we handle with anything less than FRA Class III track maintenance. CV wants to attract intermodal traffic and has made a major commitment to bulk distribution centers. Our ability to compete in these markets requires 40 mph freight operations at a minimum. Therefore, CV does not regard Amtrak's maintenance requirements as any greater than the costs required for providing good freight service. They are a cost of doing business in the market in which we compete.

We believe that CV's acquisition of the Conn River Line property interests complies fully with the rail transportation policy in that it will promote safe and efficient rail operations in the region we serve, permit effective competition among rail carriers and with other modes, improve effective coordination with other carriers, including B&M, and promote operation of transportation facilities and

equipment without detriment to the public health and safety.

CV currently operates over the Conn River Line, and the rights we are acquiring are simply the ability to maintain the Line to our corporate standards, to interchange with one regional carrier at Bellows Falls and to dispatch the operations over the Line in a nondiscriminatory fashion. These changes are limited in scope and have no potential for attaining or abusing market power. I would hope the Commission could act quickly and affirmatively on Amtrak's application and CV's petition for exemption.

VERIFICATION

County of Wayne)
) ss:
State of Michigan)

Gerald L. Maas, being duly sworn, deposes and states that he has read the foregoing statement, knows the facts asserted therein, and that the same are true and correct to the best of his knowledge and belief.

Executed at [Detroit, Michigan,] this [2nd] day of June, 1988.

[Signature]
Gerald L. Mass

Subscribed and sworn to before me
this [2nd] day of June, 1988

[Signature]
Notary Public

My Commission Expires: [Date]

BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D.C.

THE NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)—CONVEYANCE OF BOSTON AND MAINE CORPORATION INTERESTS IN CONNECTICUT RIVER LINE IN VERMONT AND NEW HAMPSHIRE

VERIFIED REBUTTAL STATEMENT OF JAMES L. LARSON

My name is James L. Larson. I have previously submitted a verified statement on behalf of Amtrak in this proceeding. The purpose of this rebuttal statement is to respond to certain statements submitted by Boston and Maine Corporation (B&M) and its witnesses in the argument and evidence presented by B&M in this proceeding on May 31, 1988.

1. On page 17 of its argument, B&M states: "Amtrak has stated that its only goal is to resume operation of the Montrealer." This statement is incorrect. Before committing millions of dollars in capital money, Amtrak has insisted on knowing precisely what its future cost of operations would be and has demanded assurances that the rail line would in fact be maintained in a satisfactory condition at a reasonable cost to Amtrak. Amtrak has never been willing to spend the $5 million in federal funds available to it for restoration of the Montrealer service without assurances that (a) the work necessary for resumption of service would be performed promptly and efficiently and (b) that, when the work was completed, Amtrak would be able to provide rail passenger service on the Connecticut River Line on a long-term basis that ensured both reliable and economical operations. Prompt

restoration of the track and restoration of the Montrealer service alone were not sufficient.

2. On page 14 of its argument, B&M states as follows: "B&M has continued to express its willingness to use the $5,000,000 in federal funds to upgrade the Connecticut River Line and to operate the Montrealer on reasonable terms and conditions." B&M's repeated reference to "reasonable terms and conditions" simply begs the fundamental issue of the basis upon which Amtrak might be allowed to operate on the Connecticut River Line in the future. In addition, B&M has stated that the amount of rehabilitation work that it could perform on the rail line would be far less than Amtrak has obtained commitments from CV to perform. Mr. Fay, who is not an engineer, states at page 21 that $3.1 million "will not bring the line segment to acceptable standards to permit passenger trains to operate at speeds desired by Amtrak." Amtrak's engineering staff has determined that the required work can be performed for $3.1 million. More importantly, CV has committed to perform the scope of work agreed upon by the parties, and Amtrak will not have to pay more than $3.1 million regardless of CV's ultimate cost. Once the work is performed, CV will maintain the line in the restored condition for 20 years, whereas B&M refused to make any commitment for more than one year.

3. At page 30 of its argument, B&M states that "Amtrak has no financial stake in the transaction," aside from bearing a portion of the expenses in this legal proceeding. This statement is incorrect. Amtrak is providing more than $3 million in funds which have been appropriated specifically for our benefit. In exchange for this investment, Amtrak is obtaining rehabilitation of the rail line, a guarantee that the rail line will be properly maintained for a period of 20 years, and a commitment during this period to allow operation of Amtrak trains on the Connecticut River Line at a reasonable, predetermined compensation level.

4. At page 55 of its argument, B&M states that "resumption of passenger service by Amtrak is not the overriding goal" of the transaction between Amtrak and CV. Prompt resumption of passenger service with adequate long-term guarantees concerning reliable and economical operation on this route are Amtrak's *only* goals in this transaction. In order to achieve these goals, we support the conveyance of the rail line to CV, because it has made the short-term and long-term commitments required to protect our interests.

5. B&M's argument and supporting verified statements are full of statements to the effect that Amtrak has not demonstrated there is a lack of agreement between the parties that is sufficient to permit Amtrak to proceed to the Commission pursuant to Section 402(d) of the Rail Passenger Service Act for condemnation of the Connecticut River Line. Amtrak can never prove that it is absolutely impossible for Amtrak and B&M to agree on some arrangement for the sale of the Connecticut River Line. However, all of B&M's conduct during discussions and negotiations in 1987 and 1988 has led Amtrak to believe that B&M and Amtrak have widely divergent views as to what represents reasonable terms and conditions and compensation, and that it would be foolish to expect the parties to agree unless something happens to fundamentally change the views of one or both parties. Amtrak has offered compensation to B&M in excess of the amount we feel they would be entitled to in a proceeding before the ICC pursuant to Section 402(d). Since that time, Amtrak and its contract partner CV have expended considerable funds and effort to pursue this proceeding before the Commission and its agreements with CV. In order for the parties to reach agreement, B&M would have to persuade Amtrak that it will offer Amtrak a price and other terms and conditions that are more favorable to Amtrak than the result Amtrak can reasonably hope to receive from the Commission and its agreements with CV.

It is interesting to note that on page 4 of his verified statement, David Fink says that B&M has "not yet completed an appraisal" and does not really know what the value of the line is. Regardless of the lengthy history of dealings with Boston & Maine prior to March 18 which lead Amtrak to believe that it was unlikely that we could reach agreement with B&M for sale of the Connecticut River Line, the conduct of B&M subsequent to that time has clearly confirmed our opinion that we will not be able to agree on reasonable terms for purchase of the Connecticut River Line, and most certainly the discussions suggested by B&M would proceed slowly. B&M has been free throughout the entire period since March 18 to make a constructive proposal to Amtrak for sale of the line; instead, Mr. Fink simply continues to assert that we have not engaged in negotiations that are satisfactory to them. It is hard to imagine how we could have conducted such discussions since Mr. Fink still says he has no idea what the rail line is worth. Amtrak had a need to take steps to ensure the prompt upgrading of the line to permit restoration of Montrealer service on a basis that would ensure its long-term economical and reliable operation, and the authority available under Section 402(d), along with the firm commitments we have received from CV, offer us precisely the relief we require. Even if the parties might conceivably agree at some future time, such future agreement would not be satisfactory since immediate action is required both the [*sic*] prevent further degradation of the rail line and to restore Montrealer service as promptly as possible.

Without the CV's promise to pay us at least $1 million for the rail line, Amtrak would have had virtually no ability to negotiate with B&M for purchase of the Connecticut River Line. While Amtrak's latitude in negotiation is constrained somewhat by our financial limitations and the provisions of agreements we have entered into in an effort to solve the problems presented by the deterioration of

the Connecticut River Line, Amtrak retained the ability to negotiate with B&M concerning terms for acquisition of the line even after we filed our case in this proceeding on April 4, 1988. It is significant that B&M has never made a serious proposal for sale of the Connecticut River Line to Amtrak. For example, in the limited discussions Amtrak had where sale of the line was mentioned, B&M representatives suggested that the value of the line lay in its potential for condominium development, which clearly has no relationship to the value Amtrak believes is appropriately attributable to the line. It also belies an interest in continued operation of the line by B&M for freight service.

6. On page 3 of his statement, Mr. Fink states "Until March 18, 1988, Amtrak had always taken the position that it had no interest in purchasing the Connecticut River Line." The same point is made several times in B&M's argument. In my discussions with B&M representatives, I had stated that Amtrak alone could not afford to purchase the Connecticut River Line for the limited operation of only two passenger trains daily. In order for the line to be viable for passenger train operations, it clearly must have a vital freight operation that bears the preponderance of the operating and maintenance costs. CV understands this and has been willing to make the long-term commitment to maintain the Connecticut River Line in a condition that will permit both freight and passenger trains to be operated on an efficient basis.

7. In its argument and in the verified statement of Gordon Fay, the B&M asserts that "Amtrak has no need to use the Connecticut River Line" (Fay page 14). Among other things, B&M contends that the service through Connecticut, Massachusetts, Vermont, and New Hampshire provided by the Montrealer is unimportant, and that service from New York to Montreal via Albany and over the Delaware and Hudson would be an appropriate substitute for the restoration of Montrealer service.

Amtrak is legally responsible for operating the nationwide system of rail passenger service established by Congress, as that system may be modified in compliance with the provisions of Title IV of the Rail Passenger Service Act. Amtrak has determined that it is necessary to restore operation of the Montrealer service between Washington and Montreal via New York City and New Haven; that service restoration requires use of the Connecticut River Line. The arguments presented by Mr. Fay and B&M as to why they might provide a different service on a different route are irrelevant in this proceeding. In addition, the B&M presentation contains the following assertions that are either incorrect or misleading:

- At page 10 of his statement, Mr. Fay asserts the need to transfer between Penn Station and Grand Central Station in New York City is a "minor inconvenience". Amtrak strongly disagrees with this assertion. Amtrak believes the availability of direct through service from the major population centers south of New York City to points in northern New England and Montreal is very important.

- Mr. Fay's analysis of the ridership of this train focuses solely on the traffic to and from eight relatively small cities in Vermont and northern Massachusetts, as well as the ridership to and from the end point in Montreal. It ignores the through service provided from points south of New York City to Montreal, as well as the direct service from points between New York City and Northampton (i.e., large, populous segments of the states of Connecticut and Massachusetts) to Montreal and to other points in northern New England.

- Amtrak is not aware at this time that another train between New York Grand Central Station and Montreal would be warranted or viable on the route already served daily by The Adirondack.

Congress has not entrusted either to the Interstate Commerce Commission or private litigants any authority to determine what represents an appropriate route structure for Amtrak. The rambling efforts of Mr. Fay and the B&M to assert that either the Montrealer service simply should not be operated at all or that it can be eliminated and replaced with a different train serving a considerably different market indicate the wisdom of the Congress in reserving these decisions to Amtrak within the parameters set by Congress.

8. Section 1.2 of the proposed "Trackage Rights Agreement Between Central Vermont, Railway Inc. and Boston & Maine Corporation", which is attached to my previous statement in this proceeding, provides that B&M shall have the sole right to serve shippers currently on the line, provided that CV shall also be entitled to serve such a shipper in the event "such shipper initiates a request to CV, or to the ICC, that CV provide service to its facility because of unsatisfactory service by B&M". While this proviso was primarily intended to enhance competition by ensuring that an alternate carrier would be available in the event that B&M failed to provide satisfactory service on the Connecticut River Line, Amtrak is concerned at the lack of clear standards and procedures in the proposed exception. As a result, we have approached CV requesting that the proposed Trackage Rights Agreement be modified to delete this exclusion, and CV has agreed to accept such a modification.

9. In response to B&M's objection that section 14.1 of the proposed Trackage Rights Agreement prohibits B&M from assigning its trackage rights without the prior written consent of CV, Amtrak and CV have agreed that this provision should be modified to add a proviso that such consent may not be unreasonably withheld.

10. Finally with respect to the proposed Trackage Rights Agreement, Amtrak and CV are agreeable to modifying

the proposed agreement to specify that B&M would not be obligated to pay any portion of the cost of rehabilitating the line to the standards specified in the rehabilitation agreement between Amtrak and CV, even if such cost ultimately does exceed the $3.1 million contribution being made by Amtrak to the cost of the rehabilitation.

11. B&M has asserted that the economics of the total transaction negotiated by Amtrak and CV are such that CV might somehow be unable to fulfill the commitments it is making to Amtrak and continue to operate a viable freight service on its entire system. Prior to entering into the series of agreements with CV for the acquisition, rehabilitation, and long-term operation of the rail line, Amtrak carefully reviewed the ability of CV to fulfill those commitments. Amtrak has satisfied itself that the savings CV will realize through improved operating efficiencies as well as the resumption of Amtrak operations, with the substantial potential for earning incentive payments from Amtrak for high quality performance, will have a favorable economic impact for CV, and that CV should be able to fulfill its obligations under these new agreements. CV will also be able to resume operating the Montrealer on the remainder of its line between East Northfield and the Canadian border. Amtrak believes that any risks associated with CV's financial condition are outweighed by the potential value of the negotiated arrangement to Amtrak and the complete lack of satisfactory alternatives for restoration of the Montrealer Service.

12. At page 50 of its argument, B&M asserts that "a section 402(d) conveyance would significantly impair B&M's common carrier obligations," because Amtrak would not propose to directly grant trackage rights to B&M. It should be clear that if CV is prevented by the ICC from acquiring the property from Amtrak, Amtrak will not itself acquire the property from B&M.

13. On page 37 of its argument, B&M asserts that if the Commission permits the transaction worked out between Amtrak and CV to be implemented, there may be no limit to the ways in which Amtrak and other freight railroads might conspire to abuse the authority of Section 402(d) of the Rail Passenger Service Act. While as a factual matter there is no cause for concern that Amtrak will abuse the authority conferred by Section 402(d), it is worth noting that if a transaction such as the one Amtrak and CV have negotiated is to work, the Commission must either approve or exempt the reconveyance by Amtrak to the acquiring freight railroad. That aspect of ICC jurisdiction should ensure that there will be no abuse of Section 402(d) authority by Amtrak.

14. B&M's argument and supporting statements are full of assertions that control of the Connecticut River Line by CV will adversely affect competition. It is Amtrak's firm opinion that the most unhealthy circumstance for a competitive transportation system is the existence of a rail line on which the speed of operations is restricted to 10 mph on more than half of its length. The acquisition and upgrading of the Connecticut River Line by CV can only help competition and transportation generally in New England.

15. The relief Amtrak is seeking in this proceeding is prompt control of the Connecticut River Line with ultimate transfer of ownership from B&M at the price determined by the ICC. The statute is silent on the precise mechanics to be applied in order to effect such a result, and the Commission has not issued any implementing regulations pursuant to the authority of section 402(d). As a result, Amtrak has developed a specific set of requirements to be embodied in orders of the Commission which will carry out the purpose of the statute in the event the Commission determines that Amtrak's request for condemnation should be granted. Copies of these proposed orders are attached to this statement as Exhibit 1.

16. On page 2 of his statement, Mr. Pease states that "Amtrak recognized that the track condition was perfectly adequate for B&M's freight service." That is an incorrect statement. While Amtrak recognizes that a freight railroad may reasonably choose to operate freight service on track that is maintained to a condition below FRA Class III, the deteriorated condition of the Connecticut River Line, with the majority of the trackage slowed to 10 mph operations, is clearly not suitable for operation of anything but the poorest quality freight service.

VERIFICATION

I, James L. Larson, being duly sworn, depose and state that I have read the foregoing rebuttal statement, know the facts asserted therein, and that the same are true and correct to the best of my knowledge and belief.

Executed on this [3rd] day of June, 1988.

[Signature]
James L. Larson

Subscribed and sworn to before me this [3rd] day of June, 1988.

[Signature]
Notary Public

My Commission Expires: [July 31, 1989]

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 31250

National Railroad Passenger Corporation--Conveyance of Boston and Maine Corporation Interest in Connecticut River Line in Vermont and New Hampshire

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Finance Docket No. 31259

Central Vermont Railway, Inc.—Petition for Exemption—Acquisition and Operation of Certain Interests in Rail Lines from the National Railroad Passenger Corporation

VERIFIED STATEMENT OF F. COLIN PEASE

My name is F. Colin Pease, and I am Vice President—Governmental Affairs for Boston and Maine Corporation ("B&M"). I submitted a Verified Statement earlier in these proceedings. The purpose of this Verified Statement is to provide information concerning an offer to purchase the Connecticut River Line and an offer to purchase B&M's interest in the passenger station at Bellows Falls, Vermont.

There is a passenger station at Bellows Falls, Vermont which is owned jointly by B&M and the State of Vermont. B&M has a two-thirds interest in the station, and Vermont owns the remaining one-third interest. The station is a brick structure and is in reasonably good condition. It used [*sic*] currently used by B&M and by the Green Mountain Railroad.

Within the last month, Glen Davis, the President of Green Mountain Railroad, advised me that Green Mountain would like to purchase B&M's two-thirds interest in the passenger station at Bellows Falls. The Green Mountain line connects with the Connecticut River Line at Bellows Falls. Mr. Davis indicated that Green Mountain would be prepared to pay fair market value for B&M's interest in the station.

In my earlier Verified Statement, I described discussions and correspondence between me and Robert vom Eigen, an attorney representing Central Vermont Railway, Inc. ("CV"). In these discussions and correspondence, we considered the possibility of a sale of the Connecticut River Line to CV. The discussions did not progress beyond the point of agreeing to disagree over the proper means of valuing the Connecticut River Line. CV contended that the Line should be valued for continued rail use, and I expressed the view that any purchase price should be based upon the highest and best use, whatever that might be.

CV renewed its interest in purchasing the Connecticut River Line in a letter dated January 13, 1988, from Robert A. Walker to the President of B&M, David A. Fink. A copy of this letter is attached as Exhibit A to this Verified Statement. It is interesting that this offer to purchase was made at a time, as we learned later, when CV and the National Railroad Passenger Corporation ("Amtrak") had already been planning for months to have Amtrak acquire the Connecticut River Line and convey it to CV.

As described in the attached letter, CV was offering to purchase the Connecticut River Line for $1.3 million. The $1.3 million consisted of waiving CV's judgment in the amount of approximately $600,000 against B&M in connection with certain damage to CV's Sheldon bridge and payment of $700,000 in cash. The other provisions of the offer were similar to the proposal which Amtrak and CV have now put before the Commission. B&M would have

been able to continue to operate on the Connecticut River Line and to serve existing shippers and would have been required to pay rent and its share of the expenses of operating and maintaining the Line.

B&M did not enter into discussions with CV concerning this proposal. We believed that the $1.3 million proposed purchase price was far below the fair market value of the Connecticut River Line.

VERIFICATION

COMMONWEALTH OF MASSACHUSETTS :
: ss:
COUNTY OF MIDDLESEX :

F. Colin Pease, being duly sworn according to law, deposes and says that he has read the foregoing Verified Statement, that he is familiar with the contents thereof and that the statements therein are true and correct to the best of his knowledge, information and belief.

[Signature]
F. Colin Pease

Sworn to and subscribed
before me this 29th day
of June, 1988 -

[Signature]
Notary Public

[Exhibit A To June 29, 1988 Pease Statement]

GRAND TRUNK CORPORATION
1333 Brewery Park Blvd.
Detroit, MI 48207-2699

January 13, 1988

AIRBORNE EXPRESS

Mr. David A. Fink
Chairman & Chief Executive Officer
Guilford Transportation Industries, Inc.
Iron Horse Park
North Billerica, MA 01862-1690

Subject: *Settlement Of Sheldon Bridge And Connecticut River Line Disputes*

Dear Dave:

I learned through counsel that Guilford has proposed to satisfy the judgment involving the Sheldon Bridge, which amounts to approximately $600,000 including interest, by permitting CV to set off joint facilities payments otherwise owed to B&M for use of the Connecticut River Line between Brattleboro and Windsor, Vermont until such judgment is satisfied. Although your proposal is not acceptable to CV, we do believe the Sheldon Bridge judgment can provide a means for resolving the Connecticut River Line issues identified in my October 22, 1987 letter to you.

To respond to your proposal, the current level of deferred maintenance on the Windsor to Brattleboro section of the Connecticut River Line has imposed costs upon CV. Even if joint facilities payments were owed to B&M, the judgment would not be satisfied for nearly two years given the payments owed by B&M to CV for use of the adjacent segments of the Connecticut River Line, and the current level of payment withheld by CV.

As an alternative resolution of our differences, we propose that the Sheldon Bridge judgment be used as a down payment on CV's acquisition of certain of B&M's interests in the Connecticut River Line. The current situation on that line is intolerable. The condition of the line is deteriorating. When we bring these conditions to your attention, the response has been either to impose additional slow orders or to direct our track inspectors to discontinue their monitoring of the condition of the line. CV would like to purchase the right to control maintenance and dispatching on the line.

Specifically, CV is prepared to offer $700,000 in cash plus the Sheldon Bridge judgment to acquire B&M's fee interest or other rights in the rail line and adjacent rail properties between the Windsor depot in Windsor (B&M MP 108.9) and Brattleboro (B&M MP 60.1). For this amount, CV would also acquire the right to dispatch all segments between White River Junction and East Northfield, Massachusetts. Under this proposal, B&M would retain the right to serve existing shippers and interchange traffic along the line and be obligated to share expenses of maintenance and operations of the line on an equitable basis. The rental fee would be 7.5 percent of the purchase price plus betterments paid for with CV funds. These rights would be assignable only with CV's prior approval.

Dave, I think we would both agree that it would be desirable to resolve our differences outside the courtroom, and I would hope to hear from you by January 22, 1988.

Sincerely,

Robert A. Walker

Copy to:
Ellen Fallon, Esq.
Robert I. Schellig, Jr., Esq.

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 31259

Central Vermont Railway, Inc.—Petition for Exemption—Acquisition and Operation of Certain Interests in Rail Lines from the National Railroad Passenger Corporation

VERIFIED STATEMENT OF F. COLIN PEASE

My name is F. Colin Pease, and I have submitted two other verified statements in these proceedings. The purpose of this Verified Statement is to discuss certain competitive aspects related to the attempt by Canadian National ("CN") and its subsidiary, Central Vermont Railway, Inc. ("CV"), to acquire the Connecticut River Line from Boston and Maine Corporation ("B&M").

The Interstate Commerce Commission is faced with the requirement that two decisions be made on or before August 8, 1988. The first is to determine the value of the Connecticut River Line between Brattleboro and Windsor, Vermont (Finance Docket 31250), and the second is to determine whether the CN rail system should be permitted to acquire the Connecticut River Line from the National Railroad Passenger Corporation ("Amtrak") under an exemption procedure (Finance Docket 31259). The Commission has been told by Amtrak that a low valuation and a positive decision on the exemption request are essential if Montrealer service is to be resumed between Springfield, Massachusetts and White River Junction, Vermont. The Amtrak assertion is not only incorrect, but it masks the gravity of the decision faced by the Commission and attempts to reduce the decision process from a critical eco-

nomic and competitive review of the issues to an assessment of the political winds. The exemption decision has become even more critical with the recent bankruptcy of B&M's affiliate, Delaware and Hudson Railway Company ("D&H").

AMTRAK DOES NOT NEED TO PURCHASE THE LINE TO OPERATE THE MONTREALER

If the goal is to provide a mechanism to operate the Montrealer over tracks which are adequate for the speeds that Amtrak desires, that mechanism exists and has existed for many months. B&M has indicated several times in writing to Amtrak that it is willing to enter into an Agreement with Amtrak for the operation of Montrealer service. In addition, B&M has indicated that it is prepared to utilize $5 million in federal funds appropriated for the purpose of upgrading the Connecticut River Line. B&M has determined that the bulk of the funds could be utilized for that portion of the Line north of Brattleboro, Vermont and has held a series of discussions with the Commonwealth of Massachusetts in order to reach an agreement to combine some of the federal funds with State funds to rehabilitate the portion of the Line which lies in Massachusetts. Utilizing these two sources of funds, the Line could be rehabilitated to a condition which would permit the passenger schedules desired by Amtrak.

B&M has indicated that the major obstacle to reaching an agreement for the operation of the train is the determination of a fair level of compensation by Amtrak for the use and maintenance of the track which is associated with the operation of the passenger service. Amtrak has refused consistently to enter into any meaningful negotiations regarding this issue, insisting instead on a per train mile payment which bears little resemblance to the true costs associated with the operation of the train. Acknowledging that this disagreement exists, B&M has indicated a willingness to place this issue before the Commission for

binding arbitration and has indicated a willingness to permit the rehabilitation work to be done while a proceeding is taking place.

If, on the other hand, Amtrak has determined that it is essential to own the Connecticut River Line north of Brattleboro in order to operate the Montrealer it is not precluded from attempting to utilize authority granted by Congress to purchase the Line. There exists at least a plausible argument, though one with which B&M does not agree, that if Amtrak needs the Line and has received the proper approvals, it should be permitted to acquire the Line. If, in fact, Amtrak has properly interpreted the law, they have that right, and B&M, either by Commission order or after review by the courts, will receive compensation which comports with the Constitution. That, however, is not what is happening in this case.

AMTRAK ACQUISITION MASKS TRUE COMPETITIVE ISSUES

Amtrak has clearly indicated that it has no funds to acquire the Line and has no interest in owning the Connecticut River Line for the purpose of protecting the operation of the Montrealer. Indeed, Amtrak has made no long term commitment to the operation of the train. Amtrak cannot make any such valid commitment since each year its very existence is dependent on the appropriation of substantial funds by Congress. Amtrak cannot commit to continue an operation with funds that it has no assurance that it will ever receive.

Indeed, the Interstate Commerce Commission is being asked to approve a transaction which may provide Amtrak a lower cost mechanism for operating the Montrealer in the short-term, because the real acquirerer [*sic*] of the Line—CV—believes that it is to its advantage to absorb a portion of the real costs of operating the Montrealer. Through CV's acquisition of the Line, it will be gaining a substantial benefit—the ability to invade a portion of a

market in which today B&M is a substantial competitor. If successful, it would provide the CN rail system with an opportunity to destroy competition in a portion of the New England rail market, rather than to enhance it.

The CN system has demonstrated over the past years that it has no real interest in promoting efficient competitive rail service in New England. In the past, CN has proposed that it gain access to all of the Guilford rail system's major rail customers in the State of Maine. It has been well documented that if such an action were approved, the Guilford system would over time cease to exist, thereby severely reducing rail competition in the State of Maine and throughout New England. The two trunk line carriers which would control the ingress and egress of all rail traffic into the State of Maine would be the two Canadian roads, CN and Canadian Pacific ("CP"). If CN controlled access to the major customers, it would effectively control the market.

The CN system has also taken actions which were designed to inhibit the Guilford system's ability to improve its productivity and reduce its cost in order to compete in the New England market. When the Guilford system was in the midst of significant turmoil due to a strike and secondary picketing by its employees, CN met with and in some cases distributed to Guilford customers information which, in my view, was designed to disparage and discredit Guilford.

When B&M attempted to lease a portion of the Connecticut River Line to its affiliate, Springfield Terminal Railway Company ("ST"), the CN system again stepped in to attempt to stop the lease. To date, CN has been successful in withholding the benefits of ST operations to Vermont and New Hampshire shippers, causing B&M costs on the Line to be higher than on any other part of the Guilford system.

Finally, the CN system has been working closely with Amtrak since August, 1987 to seize a portion of B&M as well as the business which B&M presently is successful in attracting to the Guilford system over the Connecticut River Line. If CN is successful, it will eliminate the Guilford system as a competitor north of East Northfield, Massachusetts and will weaken Guilford's competitive position in New England.

DELAWARE AND HUDSON BANKRUPTCY

On June 20, 1988, as a result of a decision of an arbitrator, Richard Kasher, D&H was forced to seek protection under Chapter 11 of the Bankruptcy Code. The action removed Guilford from having any ability to control the actions of D&H and indeed left in doubt whether D&H has any future as an operating railroad. While the final decision regarding the future of the carrier cannot be predicted, it is well known that D&H could not have survived since the mid-1970's without the substantial infusion of capital from outside sources. When D&H was acquired in 1984 by Guilford, there were no other buyers. Since 1984, Guilford has invested over $40 million into D&H. The arbitrator's decision placed D&H in a position in which it could no longer generate cash.

It was the practice of the Guilford system to utilize the D&H line between Albany and Montreal as a principal main line to Canada. The Guilford rail system scheduled its through freight trains in a manner which demonstrated that this was a good service route to Canada for its long haul traffic. Another westbound option available to Guilford customers was to route westbound traffic via D&H to Buffalo, where it could then proceed west via various connections.

Both of these options are now in doubt pending a resolution of the D&H bankruptcy, a resolution which will not happen before the time at which the Commission has indicated that it will render a decision on the CV-CN ex-

emption request. The Guilford rail system today faces significantly different options for developing competitive service routes for shippers moving between New England and Canadian destinations. An excellent option available to the Guilford system today is via the Connecticut River Line. Without cost effective access to the Line and existing interchanges at Wells River and White River Junction, the Guilford system will be left with a severe competition disadvantage.

While Guilford also interchanges traffic with the CN system at Danville Junction, Maine, it relies on the Connecticut River Line as a key route for attracting rail traffic to the central New England market. Since the B&M portion of the move is a relatively short haul, with the CN system controlling the long haul, CN/CV will frequently weigh the benefits of encouraging an all rail move to B&M destinations versus utilizing a terminal on CV and transloading to truck to the final destination. By having the ability to have a negative impact on B&M costs, CN will have the ability to "encourage" an increasingly larger share of the traffic to move long haul on CN/CV and eliminate B&M as a participant in the move. When the Guilford system had the ability to offer shippers a competitive long haul route via Rouses Point over D&H, Guilford was able to maintain competitive parity with the CN system. If the Commission were to grant the exemption requested by CV, it would further enhance the ability of the CN system to influence the market, while diminishing the ability of the Guilford system to participate in the traffic.

The CN system earns significant revenues on traffic originating and terminating in New England by virtue of the fact they have an enormous ability to negotiate attractive rates and routes. Giving CN control over the Guilford system's only realistic gateway to Canada for southern and central New England traffic, gives them an ability to limit the amount of traffic flowing over B&M. Such an action would simply weaken the entire Guilford system as

a meaningful competitor throughout much of New England.

In 1987, CV incurred a loss of $0.4 million and in 1986 incurred an operating loss of $0.9 million. In its efforts to seize the Connecticut River Line, it is expending enormous sums of money and effort. It cannot be taking this action unless it sees an opportunity to utilize such an acquisition to render its primary rail competitor, the Guilford system, less competitive than it is today. It is the belief of the Guilford system that the CN rail system is fully cognizant of the competitive benefits which would accrue to CN if it were in a position to own the Connecticut River Line north of Brattleboro. CN would gain access to all B&M traffic on the Line and would effectively render B&M non-competitive in the market, eventually forcing it to withdraw.

CV has argued that neither B&M nor the competitive balance would be adversely affected by a transfer in ownership of the Connecticut River Line, because CV proposes to grant trackage rights to B&M. If CV really believes that it will gain no advantage, why does it want to acquire the Line? If CV is really sincere in its contention that B&M and competition will not suffer, why does CV insist on reversing the roles of B&M and CV on the Connecticut River Line? The answer is that CN and CV recognize the competitive advantages that ownership and complete control of the Line will afford them, especially in light of the loss by the Guilford system of the D&H route.

REGIONAL CARRIERS NEED PROTECTION FROM MEGA CARRIERS

The Guilford rail system is a small regional carrier serving five of the six New England states. It has a character similar to many other regional systems. Its densities are light. It is a short haul railroad, and its terminal costs are high because it does not possess the ability to amortize its costs over a long freight haul.

For example, while Class I carriers in the United States average 12.4 million gross ton miles per mile of road, B&M averages only 2.9 million and Maine Central 1.275 million. In addition, the average length of haul for the Guilford system is also significantly less—188 miles for Guilford system roads versus a national average of 664 miles. The Guilford statistics include D&H, so that Guilford's average haul will be even shorter since the D&H bankruptcy. A count of total carloads handled shows that the railroads of the Guilford system handled less than 1% of total rail traffic in the United States.

Because it is a regional carrier which has many of the associated problems of regionals, the Guilford system has been enduring a two-year program to change the system to make it more efficient and cost effective. These changes have been controversial and are well known to the Interstate Commerce Commission. While controversial, they are absolutely essential if the system is to maintain its competitive position in the New England market and if it is to grow. In the past two years, the Guilford system has incurred losses of significant revenue, placing the carrier in a difficult and vulnerable position, especially in light of the highly aggressive actions of CN. The Guilford system has not had the resources necessary to mount a massive public relations campaign, such as the joint Amtrak-CN forces have mounted, and have been taxed to finance the costs of opposing the Amtrak-CN forces in their attempts to seize the Connecticut River Line. It has mounted that fight, however, because the Guilford system cannot afford to permit CN to take essential traffic and divert it away from the Guilford main line system.

CONN RIVER SHIPPERS DO NOT LACK COMPETITIVE OPTIONS

The one shipper which has actively participated in these proceedings—Windsor Minerals—has indicated that it is doing so because it has not received adequate service from

the Guilford system and that it needs an alternate exchange at Bellows Falls which the CN acquisition would provide. The assertion of Windsor Minerals does not accurately portray the range of competitive options which are presently available to the shipper and misstates the intentions of the Guilford system.

Windsor Minerals today has available a range of transportation alternatives. It can route its traffic via rail over the Green Mountain Railroad to Bellow [*sic*] Falls for interchange with B&M, or it can route rail traffic to Burlington, Vermont for interchange with the CN system, or it can route rail traffic to White Hall for interchange with D&H, which is being operated today by the Delaware Otsego system. In addition, Windsor Minerals has the option of trucking or combining a truck move with a bulk loading facility at any number of loading facilities. It is our understanding that in 1987 Windsor Minerals used all of the alternatives available to them, and shipped approximately 70% of its outbound loads by truck.

Thus, Windsor Minerals has available to it a range of competitive alternatives. One reason the Guilford system is aggressively seeking to improve productivity on its system is to enable it to improve its ability to attract additional Windsor Minerals traffic to the Guilford rail system.

PUBLIC POLICY AND THE EXEMPTION REQUEST

The purpose of an exemption is to remove regulation in certain situations if the Commission determines that the market is sufficient to provide competitive options to affect customers. In the past, exemptions have been granted for line sales but, to the best of our knowledge, only in situations where both parties are willing to participate in a sale. Frequently, the Commission has permitted such sales because of the recognition that such actions were essential for the preservation of service over certain lines and where the exemption would frequently permit a lower cost carrier to operate a line where previously a traditional Class I

carrier with its associated higher costs could not remain in business and meet its costs.

In the case of the Connecticut River Line, the Interstate Commerce Commission is being asked to effectively remove a regional carrier which, with the exception of the Connecticut River Line, has significantly changed its cost structure to a level that is similar to the many new regionals. The traffic on the Connecticut River Line is light density traffic even when one considers all of the business which presently moves over the Line. The Commission should determine how a traditional Class I mega carrier like CN, with all of its higher costs, can expect to expand and compete on the Line with its existing business. We believe that CN can only do so if it is successful in removing Guilford from the market. Such issues must be fully explored before any authorizations to proceed are issued.

The request for the exemption requires a review of the public policy related to the granting of exemption. An exemption should be granted only if it is determined that regulation is being removed and competition fostered. In the case of the proposed Connecticut River Line transaction, the Commission is not being asked to remove existing regulation; rather, it is being requested to add regulation. The Commission is being asked to bless a series of agreements which would provide additional restrictions on the Guilford system and would effectively remove the carrier as a competitor in a number of markets because of the enormous financial resources and market power of the CN system. With the elimination of D&H as a partner in the Guilford system, approval of the exemption would grant the CN system with the power to seriously affect the ability of other parts of the Guilford system to exist. By controlling the Connecticut River Line, CN will control Guilford's service route to CN and CP. CN would have the ability to effectively remove revenue producing traffic from Guilford's main line in Massachusetts.

Granting of the exemption, even if D&H had continued to be part of the Guilford system, would not have promoted competition in New England. Granting it today with the very existence of D&H in doubt would provide the CN system with the ability to effectively control a segment of Guilford's traffic and thus reduce the effectiveness of the Guilford railroads as a competitor in the entire New England market.

VERIFICATION

COMMONWEALTH OF MASSACHUSETTS :
: ss
COUNTY OF MIDDLESEX :

F. Colin Pease, being duly sworn according to law, deposes and says that he has read the foregoing Verified Statement, that he is familiar with the contents thereof and that the statements therein are true and correct to the best of his knowledge, information and belief.

[Signature]
F. Colin Pease

Sworn to and subscribed
before me this 19th day
of July, 1988

[Signature]
Notary Public